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Commonwealth of Massachusetts  
Office of the Attorney General

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Attorney General



Domestic Violence: The Challenge  
For Law Enforcement

GOVERNMENT DOCUMENTS  
COLLECTION

MAY 11 1995

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Northeastern University  
October 18, 1993




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**"Report on Domestic Violence: A Commitment  
to Action"**





## EXECUTIVE SUMMARY

This report is the culmination of a two-year series of working luncheons co-sponsored by Attorney General Scott Harshbarger and the Harvard School of Public Health, Center for Health Communication, directed by Jay A. Winsten, Ph.D. The sessions were conducted in cooperation with the Massachusetts Coalition of Battered Women Service Groups.

To date, nine luncheons have been held which have brought together key policymakers, legislators, advocates, members of the criminal justice system and law enforcement, academicians, and representatives of the media. The goal of the luncheon series was to raise media and public awareness about the problem of domestic violence, with the hope of promoting meaningful change in public policy.

Eight sessions focused on a wide range of critical issues in domestic violence: the implications of the new amendments to the twelve-year-old Abuse Prevention Law; the granting of clemency for battered women imprisoned for killing their batterers; guidelines for the police response to domestic violence; training for all personnel in the judicial system; the need for an integrated, multidisciplinary approach to combatting domestic violence; the role of the medical community in identifying and assisting victims of abuse; the implications of the family preservation concept for battered women and their children; and the efficacy of batterers' treatment programs. The ninth session was devoted to a discussion of recommendations for domestic violence policy in Massachusetts.

The key recommendations contained in this report fall into three major areas: (1) early intervention and prevention; (2) the need for an integrated, multidisciplinary approach to the problem of domestic violence; and (3) long-term strategies to protect victims and prevent further domestic violence in Massachusetts.

Please note that the recommendations section of this Executive Summary merely highlights the intervention efforts that need to be implemented if we are seriously committed to breaking the cycle of violence. The reader is urged to read the entire report for a more in-depth discussion of the suggested remedies.

### **Key Recommendations:**

1. Resources must be available to ensure that battered women can gain access to services by trained advocates on a 24-hour basis.
2. Multi-disciplinary training on domestic violence should be mandated for all health care workers, including but not limited to physicians, nurses, social workers, and students in those disciplines, who come in contact with victims of abuse.

3. More social workers and victim advocates trained in domestic violence issues are needed in medical settings.
4. Health care institutions need to ensure that health care workers have adequate time to see patients in order to explore the possibility of violence and to discuss options, as part of their obligation to implement the requisite domestic violence protocols.
5. A unique program which offers battered women's advocacy within a pediatric health care setting (the AWAKE Project of Boston's Children's Hospital) should be replicated in other health care institutions which provide services to abused children.
6. Massachusetts law needs to be further amended to allow minors to seek treatment for injuries related to domestic violence without parental permission.
7. Employee assistance programs should include the provision of appropriate resources and referrals concerning domestic violence.
8. Employers should have protocols in place for dealing with employees who are victims or perpetrators of violence.
9. Special protocols must be developed regarding criminal justice or law enforcement officials who are the defendants in 209A petitions, orders, and/or charges.
10. There should be uniform, integrated standards of practice and multidisciplinary training developed for all individuals who are part of the domestic violence response network.
11. Such training should include a focus on cultural and linguistic minorities, and other populations which traditionally have been underserved, such as the differently-abled, people in same-sex relationships, and substance abusers.
12. Appropriations for expenditures associated with basic training in the area of domestic violence should be a budget priority for FY '94 and subsequent fiscal years.
13. A system should be established which can ensure that professionals or other certified individuals or organizations responding to domestic violence are in compliance with applicable laws and standards of practice, and are held accountable for their actions or inactions.
14. Police departments should designate a trained domestic violence officer or establish specialized domestic violence units to handle such cases.
15. Once the law enforcement and the criminal justice systems are involved in domestic violence matters, they should make all efforts to expedite the processing of domestic



violence cases and to minimize the possibility of harm. These efforts include the prompt issuance of restraining orders and warrants, the ordering of pre-trial probation for the batterer in serious cases of domestic violence, and developing sentencing guidelines for violations of restraining orders.

16. District Attorneys' Offices should utilize designated funds to create domestic violence units with specially-trained prosecutors and victim/witness advocates to handle criminal prosecution and post-conviction follow-up in domestic violence cases.

17. District Attorneys' Offices should explore possibilities of coordination with federal criminal justice officials to assist victims of abuse with relocation and identity changes when appropriate.

18. Probation officers must give high priority to serious domestic violence cases. They must follow batterers closely for compliance with court orders, participation in batterers' treatment programs, and adherence to other terms of probation.

19. The Massachusetts Department of Public Health must be given the resources necessary to certify and monitor batterers' treatment programs in accordance with the promulgated guidelines. Moreover, special batterers' treatment programs need to be developed for batterers with substance abuse problems.

20. An extensive range of battered women's programs must be supported, created and expanded to meet the increasing demands for services. These programs should include services for: victims of domestic violence from different cultural and linguistic minority communities; battered women with mental health concerns; battered lesbians; and differently-abled battered women. Finally, battered women's programs and shelters need to be developed to provide services to victims of abuse who have problems with alcohol and/or other drugs.

21. There should be specialized domestic violence advocates assigned to each district and probate and family court to assist victims with civil (pre-criminal) 209A petitions.

22. Services directed to identifying and treating the child victim/witness must be designed, funded, and implemented in shelters, the court, district attorneys' offices, and hospitals. In addition, law enforcement staff and personnel from the Massachusetts Department of Social Services should receive specific training to recognize and provide appropriate services to the children who witness and/or experience domestic violence.

23. Communication and coordination regarding the issuance and enforcement of restraining orders between the probate and the district courts should be improved.

24. Judges and family service officers should be trained in the dynamics of domestic violence as they relate to issues of custody and visitation, and the inappropriateness of ordering mediation in domestic violence cases.

25. Additional visitation centers should be created where batterers may see their children under supervision without compromising the safety of the children or the mothers.

26. Certified batterers' treatment programs should be able to respond to the demand for treatment from non-court-referred, as well as court-referred, clients.

Finally, a variety of long-term strategies aimed at preventing domestic violence and improving interventions were suggested during the course of the luncheon series.

27. The importance of the implementation of an integrated response to combat domestic violence cannot be overstated. For this reason, the "Quincy model" or other similar integrated programs should be replicated state-wide.

28. Issues of both economic and personal empowerment for victims of domestic violence need to be addressed. These include support systems such as affordable housing, day care, and job training programs, along with efforts to increase individual self-esteem.

29. Increase and improve collaboration between systems and agencies involved in the domestic violence response network.

30. The problem of domestic violence should be addressed in terms of related societal problems.

31. Efforts aimed at changing social norms towards women and violence should be undertaken.

32. Lastly, it is crucial that government leaders and policymakers adopt and articulate a strong commitment to end domestic violence. Such high-level leadership will help to ensure long-term funding, public education about the problem, and will send the message to the public that domestic violence is a societal problem which may no longer be tolerated or marginalized.



## **G.L. c. 209A: The Abuse Prevention Act**



## THE ABUSE PREVENTION ACT: CHAPTER 209A

OCTOBER, 1993

I. Chapter 209A of the General Laws, known as the Abuse Prevention Act, represents a strong statement of public policy: Domestic violence is a serious crime and is not simply a matter of personal family business. Law enforcement personnel play a key role in the implementation of this policy. Because they are most likely to be called upon to intervene when domestic violence occurs, police officers are generally the victim's first contact with the criminal justice system. These materials describe the duties and obligations of police under c. 209A.

### II. STATUTORY OVERVIEW

Chapter 209A contains nine sections.<sup>1/</sup> Sections Six and Seven are the most important for law enforcement personnel because they set forth the obligations of police under c. 209A. However, police officers should be familiar with all sections of c. 209A so that they can provide complete and accurate information to victims.

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<sup>1/</sup> G.L. c. 209A was signed into law in July, 1978. It has been amended in 1983, 1984, 1987, and 1990. The 1990 amendments went into effect on January 31, 1991.

## SECTION ONE [Definitions]

Section One sets forth definitions of "abuse", "court", "family or household member", "law officer", and "vacate order" as follows:

"Abuse", is the occurrence of one or more of the following acts between family or household members:

- a. attempting to cause or causing physical harm;
- b. placing another in fear of imminent serious physical harm;
- c. causing another to engage involuntarily in sexual relations by force, threat or duress.

Police should interpret this definition broadly when responding to a complaint. Category (a) applies to any type of physical harm or attempt to cause physical harm, for example, punching, kicking, shoving, etc. Category (b) applies to threats and to situations where the abuser has assaulted the victim but no battery has occurred. Note that the parties' marital status is irrelevant to the application of category (c). Massachusetts law contains no spousal exclusion which would prevent a married woman from charging her husband with rape. Commonwealth v. Chretien, 383 Mass. 123 (1981).

"Court", includes the superior, probate and family, district, or Boston municipal court departments of the trial court.

"Family or household members", are persons who:

- a. are or were married to one another;
- b. are or were residing together in the same household;



- c. are or were related by blood or marriage;
- d. have a child in common regardless of whether they have ever married or lived together; or
- e. are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston Municipal courts after consideration of the following factors: (1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

While c. 209A was originally intended to provide legal remedies to battered women, it can be used by both men and women, adults and minors. Under the definition of "family or household member", any person, regardless of sex or age, who has been abused by a spouse, former spouse, household member or former household member (who need not be of the opposite sex), past or present in-laws, step-children, or a blood relative, (including a minor child) may file a c. 209A abuse petition. Note that blood relatives, in-laws, or step-children need not reside or have resided with the plaintiff. The protections of c. 209A have also been extended to individuals who are or were involved in what is termed by the statute as "a substantive dating or engagement relationship".

"Law officer", any officer authorized to serve criminal process.

"Vacate order" court order to leave and remain away from a premises and surrendering forthwith any keys to said premises to the plaintiff. The defendant shall not damage any of the plaintiff's belongings or those of any other

occupant and shall not shut off or cause to be shut off any utilities or mail delivery to the plaintiff. In the case where the premises designated in the vacate order is a residence, so long as the plaintiff is living at said residence, the defendant shall not interfere in any way with the plaintiff's right to possess such residence, except by order or judgment of a court of competent jurisdiction pursuant to appropriate civil eviction proceedings, a petition to partition real estate, or a proceeding to divide marital property. A vacate order may include in its scope a household, a multiple family dwelling and the plaintiff's workplace. When issuing an order to vacate the plaintiff's workplace, the presiding justice must consider whether the plaintiff and defendant work in the same location or for the same employer.

Thus, the defendant must turn over the keys to the premises to the victim and must leave and remain away from the premises and the victim's workplace. The defendant is also barred from interfering with the victim's occupancy of the premises, damaging any of the household contents, shutting off the utilities, or stopping the victim's mail. (Police Guidelines, § 2.0, pp. 3-4; § 3.4, pp. 7-8; § 3.7, pp. 8-9)

## SECTION TWO [Venue]

Section Two permits the victim to file a complaint in the appropriate court, as defined in Section One, where the victim resided at the time the abuse occurred or where the victim resides at the time of the complaint if he/she has left the residence or household to avoid the abuse.

### SECTION THREE [Content of Orders]

Section Three sets forth the types of court orders that a victim may request by filing a complaint. Court orders include but are not limited to:

- a. ordering the defendant to refrain from abusing the plaintiff whether the defendant is an adult or minor;
- b. ordering the defendant to refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;
- c. ordering the defendant to vacate forthwith and remain away from the household, multiple family dwelling, and workplace. Notwithstanding the provisions of section thirty-four B of chapter two hundred and eight, an order to vacate shall be for a fixed period of time, not to exceed one year, at the expiration of which time the court may extend any such order upon motion of the plaintiff, with notice to the defendant, for such additional times as it deems necessary to protect the plaintiff from abuse;
- d. awarding the plaintiff temporary custody of a minor child;
- e. ordering the defendant to pay temporary support for the plaintiff or any child in the plaintiff's custody or both, when the defendant has a legal obligation to support such a person. In determining the amount to be paid, the court shall apply the standards established in the child support guidelines;
- f. ordering the defendant to pay the person abused monetary compensation for losses suffered as a direct result of such abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney's fees;



- g. ordering the plaintiff's address to be impounded as provided in Section Nine;
- h. ordering the defendant to refrain from abusing or contacting the plaintiff's child, or child in plaintiff's care or custody, unless authorized by the court;
- i. the judge may recommend to the defendant that the defendant attend a recognized batterer's treatment program.

A court is explicitly authorized under Section Three to order the defendant to refrain from contacting the victim or the victim's child or any child in the victim's care. Such "no contact" orders apply to multiple family dwellings as well as to the victim's household and workplace. (§§ 3(c) and 3(d)) In addition, a court may also issue child custody orders (even where the parties have never been married) and child support orders in accordance with the child support guidelines. However, a child support order is only permissible where the defendant has a pre-existing legal obligation to pay support. (§§ 3(d) and 3(e)).

A judge may order the defendant to pay the victim for any expenses caused by the abuse such as physician or hospital bills, lost wages, attorney's fees, or shelter expenses. Such an order may also include costs for restoring utilities and replacement costs for locks and personal property removed or destroyed. (§ 3(f))



The judge may also recommend that a defendant attend a recognized batterer's treatment program. (§ 3(i))

Section Three prohibits a court from compelling mediation. Although the judge may refer the case to the probation department or a victim/witness advocate for an information gathering session, the court may not compel the parties to meet together at these sessions.

Section Three also limits the power of the court to issue mutual restraining orders, requiring a judge to make "specific written findings of fact in the event that mutual orders are issued." (§ 3(j))

There is no statute of limitations on the filing of a complaint under Section Three of c. 209A: "A court shall not deny any complaint filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of abuse."

Section Three provides that every order must state the time and date of its expiration and include the date and time for a continuation hearing. Any order remains in effect until such hearing is held. Although any relief granted by the court shall not exceed one year, the victim may obtain an extension of orders under the following circumstances:

If the plaintiff appears at the court at the date and time the order is to expire, the court shall determine whether or not to extend the order for any additional time reasonably necessary to protect the plaintiff or to enter a permanent order. The court may also extend the order upon motion of the plaintiff, for such additional time as it deems necessary to protect from abuse the plaintiff or any child in the plaintiff's care or custody.

In addition, the fact that no abuse has occurred while the order was in effect will not, by itself, prevent the extension of the order or the issuance of a new order.

These orders are not exclusive. The court may draft specific orders tailored to the individual needs of the victim. For example, a court may issue an order directing the defendant to return all house or car keys, or to remain away from the victim's school, etc.

The victim may not be charged a fee for filing a complaint. Neither the victim nor his/her attorney shall be charged for certified copies of any orders entered by the court or for copies of the file.

Orders issued under c. 209A do not affect title to real property. Moreover, c. 209A orders affecting custody or support are superseded by any subsequent custody or support order from the probate or family court. In addition, a judge cannot issue orders for custody or support under c. 209A, where there are prior or pending custody or support orders from the probate or family court. Chapter 209A does not empower the district court to award visitation rights to the defendant.

The filing of a c. 209A complaint does not preclude any other civil or criminal remedies. However, a person who files a complaint under c. 209A must disclose prior or pending actions for divorce, annulment, paternity, custody or support,

guardianship, separate support or legal separation or abuse prevention. In cases where there are outstanding orders, a person should not be discouraged from filing subsequent c. 209A complaints.

Note that a defendant's violation of a prior protective order constitutes both a criminal misdemeanor and contempt of court. The victim may file a civil or criminal contempt action in addition to seeking criminal charges and may seek any or all of these remedies simultaneously.

### SECTION THREE A [Nature of Proceedings]

Section 3A requires that a complainant shall be informed that the proceedings hereunder are civil in nature and violation of the orders are criminal in nature. This section also instructs the appropriate district attorney's office to provide a complaint with information relative to what criminal proceedings may be available and the procedure required to initiate such proceedings. Whenever possible such information shall be provided in the complainant's native language.

### SECTION FOUR [Temporary Orders]

Section Four describes the procedure for obtaining temporary orders. A court may issue a temporary order upon the victim's filing of a complaint.

Abuse prevention cases follow a two-step procedure. At the first (ex-parte) hearing at which the abuse is established, the victim can request a number of protective orders (See Section Three, above). Following this first hearing, a temporary order is issued which is valid for a period of ten (10) days. The plaintiff receives a copy of the order, a second copy is sent to the police, and the third copy is served on the defendant. However, the defendant need not be served in hand. (c. 109A, §§4, 7; Police Guidelines, §3.7,p.8.) Assuming that the defendant is served, a second hearing is held at which both



parties are present.<sup>2/</sup> The court can then vacate, modify or continue the temporary orders for up to one year. A judge is also required to set up a continuation hearing on the date such orders are to expire. As long as the defendant has been served with the temporary order, the plaintiff is entitled to ask that the temporary orders be extended or that a permanent order be entered regardless of whether or not the defendant appears at the hearing. (See Section Three, above)

#### SECTION FIVE [Afterhours Orders]

Any judge of the superior, district, family and probate, or Boston Municipal Court may issue an order granting relief to a victim who demonstrates a substantial likelihood of immediate danger of abuse. The order then must be certified by the clerk magistrate on the next court day.

Temporary orders can be issued by phone when the court is not in session:

In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief administrative justice and shall deliver a copy of such order on the next court day to the clerk-magistrate of the court having venue and jurisdiction over the matter.

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<sup>2/</sup> If the defendant has been served with notice of the order but does not appear at the hearing, the temporary order continues in effect without further court order. (c. 209A, § 4)

Police are required to access the emergency judicial system when the court is closed for business. (c. 29A, § 6; Police Guidelines, § 2.0(E), p.2)

If the plaintiff receives an order under this section without filing a complaint, he/she must appear at court on the next business day to file a complaint. The notice and hearing requirements set forth in Section Four apply to orders issued under this section.

Since most cases of domestic violence occur during non-business hours, police should know all of the procedures that apply during this period.

## SECTION SIX [Police Responsibilities]

### A. Powers and Duties of the Police

Section Six describes the powers and duties of the police. When an officer has reason to believe that a family or household member, as defined in Section ONE, has been abused or is in danger of being abused, c. 209A requires the officer to use all reasonable means to prevent further abuse. The steps that an officer shall take, but not be limited to, include the following:

- (1) remain on the scene of where said abuse occurred or was in danger of occurring as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer. This shall include but not be limited to remaining in the dwelling for a reasonable period of time;



(2) assist the abused person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary;

(3) assist the abused person in locating and getting to a safe place; including but not limited to a designated meeting place for a shelter or a family member's or friend's residence. The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances;

(4) give such person immediate and adequate notice of his or her rights. Such notice shall consist of handing said person a copy of the statement which follows below and reading the same to said person. Where said person's native language is not English, the statement shall be then provided in said person's native language whenever possible.

"You have the right to appear at the Superior, Probate and Family, District or Boston Municipal Court, if you reside within the appropriate jurisdiction, and file a complaint requesting any of the following applicable orders: (a) an order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household, building or workplace; (c) an order awarding you custody of a minor child; (d) an order directing your attacker to pay support for you or any minor child in your custody, if the attacker has a legal obligation of support and (e) an order directing your attacker to pay you for losses suffered as a result of abuse, including medical and moving expenses, loss of earnings or support, costs for restoring utilities and replacing locks, reasonable attorney's fees and other out-of-pocket losses for injuries and property damage sustained.

For an emergency on weekends, holidays, or weeknights, the police will refer you to a justice of the superior, probate and family, district or Boston municipal court departments.

You have the right to go to the appropriate district court or the Boston municipal court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or a friend's residence, or a similar place of safety.

You may request a copy of the police incident report at no cost from the police department."

- (5) assist such person by activating the emergency judicial system when the court is closed for business; (See Section Five, above)
- (6) inform the victim that the abuser will be eligible for bail and may be promptly released; and
- (7) arrest any person a law officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to section eighteen, thirty-four B or thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, section three, four or five of this chapter, or sections fifteen or twenty of chapter two hundred and nine C. When there are no vacate, restraining, or no-contact orders or judgments in effect, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:
  - (a) has committed a felony;
  - (b) has committed a misdemeanor involving abuse as defined in section one of this chapter;
  - (c) has committed an assault and battery in violation of section thirteen A of chapter two hundred and sixty-five.



The safety of the victim and any involved children shall be paramount in any decision to arrest. Any officer arresting both parties must submit a detailed, written report in addition to an incident report, setting forth the grounds for dual arrest.

Subsection (7) of Section Six now mandates an arrest where a temporary or permanent restraining order has been violated in the presence of police or where police have probable cause to believe that such a violation has occurred. In addition, a violation of a "vacate," "refrain from abuse" or "no contact" order issued under G.L. Chapters 208, 209, 209A or 209C mandates an arrest and is subject to criminal penalties under c. 209A, § 7.

Please note that when a judge has issued a vacate, no-contact, and/or refrain from abuse order under c. 209A, certain additional conditions may have been imposed by the judge. These additional conditions may include granting temporary custody of the minor children to the petitioning parent or ordering the defendant to pay for child support, damage to property, replacement of locks, etc. In the past, there has been some confusion as to whether a criminal complaint for violation of a 209A order can be pursued if, for example, a defendant fails to pay the monies ordered by the court but has not violated either the vacate or refrain from abuse order. A criminal complaint and related criminal sanctions for violation of a c. 209A order are only permissible when the vacate, no contact, and/or refrain from abuse

provisions of the order have been violated. Violations of other conditions are enforceable through civil contempt proceedings.

Pursuant to Subsection (7) of Section Six, arrest is the "preferred response" when no orders are in effect but the officer has probable cause to believe that a person has committed a felony, an assault and battery or a misdemeanor involving "abuse". Abuse is specifically defined in Section One to include "placing another in fear of imminent serious physical harm" which, under appropriate circumstances, could include threats. (c. 209A, §§ 1, 7; Police Guidelines, § 2.0 (G) and (H), p. 2). While arrest under these circumstances is authorized, it is not mandated under the law.

Nothing in c. 209A requires the officer to present a complaint to a court or justice or to obtain a warrant before making an arrest, if the criteria for arrest set forth in Subsection 7 of Section Six are met. The authority to arrest for a misdemeanor involving abuse is a statutory exception to the complaint and warrant requirements of G.L. c. 275, §§ 2, 3 discussed in Wagenmann v. Adams, 829 F.2d 196, 207-08 (1st Cir. 1987).

#### B. Additional Provisions

"Reasonable efforts" must be made by anyone authorized to make bail to inform the victim prior to a defendant's release upon posting bail.

Additionally, Section Six now requires that upon request by the victim, either the court or an emergency response judge can issue a written no-contact order.

Finally, Section Six also addresses a police officer's civil liability for responding to a domestic violence call:

No law officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a domestic violence incident for an arrest based on probable cause when such officer acted reasonably and in good faith and in compliance with this chapter and the statewide policy as established by the secretary of public safety.

C. Violation of Orders Issued by Probate, Family, or Superior Courts

1. Probate and Family Court: Historically, when an order to vacate or refrain from abuse issued by the Probate or Family Court pursuant to c. 208, § 34B was violated, c. 208, § 34C provided for criminal penalties. However, in 1990, Section 34C was amended to provide for criminal penalties for violation an order for custody issued pursuant to any abuse prevention action as well as for violation of an order prohibiting a person from imposing any restraint on the personal liberty of another person under c. 209A, §§ 3, 4, or 5, and c. 209C, §§ 15 or 20. As a result, it now appears that violation of a custody order is a criminal offense under § 34C. However, violation of a custody order is not an arrestable offense under c. 209A, § 6(7). In addition, in most cases, there will be no other crime to be charged in addition to violation of a restraining order. This is in contrast to other actions which often suggest other criminal charges. For example, violation of a vacate order



suggests trespass; violation of a no-contact order suggests threats or assault; and violation of a refrain from abuse order suggests assault and battery, etc. However, interference with the custody rights of another suggests a civil remedy except in the instance of a parental kidnapping. Thus, Chapter 34C requires further amendment to correct this problem.

2. Superior Court: The police frequently receive copies of Superior Court restraining orders, enjoining parties from contacting or visiting another party, which are issued in the course of litigation that has nothing to do with divorce, separate support or disputes between family or household members. These orders are civilly enforceable only; police response is the same as in any non-domestic matter. However, any vacate or restraining order issued under c. 209A, whether from District, Probate and Family, Superior or Boston Municipal Court, is criminally enforceable and its violation requires an arrest.

#### D. Victim Safety

The victim's safety is paramount in any domestic violence case. Under c. 209A, the police are required to take all reasonable steps to insure that the victim is safe. In addition to making arrests when appropriate, the police may be required to remain on the scene until the victim's safety is assured, to transport the victim elsewhere, and to assist the



victim in obtaining necessary medical treatment. (c. 209A, § 6 (1), (2) and (3); Police Guidelines, § 2.0 (C), p. 2) If the defendant agrees to leave the residence but to pack his belongings in another room, police may keep the defendant in view by following him through the residence. Commonwealth v. Rexach, 20 Mass. App. Ct. 919 (1985). Under c. 209A, police must read aloud a notice of rights to the victim and provide him/her with a printed copy of such rights in the victim's native language when possible.

Issues of tenancy, immigration status, custody and visitation, and marital status must not affect and are not relevant to the enforcement obligations of police under c. 209A. Arrests should be made and outstanding protective orders enforced without regard to any argument by the defendant that, for example, his name on the lease to the apartment gives him possessory rights, or that a custody agreement entitles him to visit the home.

Police officers must fill out incident reports whenever they respond to domestic violence calls in accordance with the standards of the officer's law enforcement agency. Documentation of a defendant's prior mistreatment of the victim may be admissible in some cases to show the defendant's mental state or intent to harm the victim. Commonwealth v. Jordan, (No. 1), 397 Mass. 489, 492 (1986). In the event of a dual

arrest, the police must submit a detailed written report in addition to the incident report setting forth the basis for the dual arrest. The police may not suggest a dual arrest as a means of discouraging requests for law enforcement intervention. (c. 209A, § 6(7); Police Guidelines § 2.0, p. 3)

#### SECTION SEVEN [Service and enforcement of orders]

This section pertains to the service of court orders on the defendant. It requires that the court clerk transmit two certified copies of all orders and one copy of the complaint and summons to the appropriate law enforcement agency. Unless otherwise ordered by the court, the police must serve one copy of all orders and the copy of the complaint and summons on the defendant. There is no requirement, however, that the defendant be served in hand. In addition, Section Seven specifically authorizes service of complaints, summonses, and orders on Sunday.

Each order must contain the statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE. As set forth in this section, a violation is punishable by a fine of not more than five thousand dollars or by imprisonment in the house of correction for not more than two and one-half years, or both. The court must notify the police when any order is vacated.

If a defendant is convicted of a violation of a restraining order, and has no prior record of any crime of violence, then the court can ask that he be evaluated by a certified batterer's treatment program. If the evaluation indicates that he is amenable to treatment, then the court may order the defendant to receive appropriate treatment in addition to any other penalty. If the defendant fails to participate in treatment as ordered, then any suspended sentence will be imposed. The court may also order treatment for substance abuse. The defendant is responsible for the cost of the treatment, if he can afford it.

Where an abuse prevention order is violated, the court may order the defendant to pay the victim for all damages including, but not limited to, cost for shelter or emergency housing, loss of earnings or support, out-of-pocket losses for injuries sustained or property damaged, medical expenses, moving expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's fees.

The criminal remedies provided in Section Seven are not exclusive. A criminal action does not preclude enforcement of such orders by civil contempt procedure.

#### SECTION EIGHT [Confidentiality of records.]

This section permits the court to impound the victim's address. The victim may request that the court impound his/her



address, keep it from appearing on orders, and otherwise ensure that the address remains confidential.

Records of cases brought under c. 209A shall be withheld from public inspection.

SECTION NINE [Standard complaint form.]

Section Nine requires the administrative judges of the superior, district, family and probate, and Boston municipal court departments to promulgate a standard form complaint. If no form complaint is available, a plaintiff may prepare and file a complaint pro se.

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## 209A § 1

### Definitions

As used in this chapter the following words shall have the following meanings:

"Abuse", the occurrence of one or more of the following acts between family or household members:

- (a) attempting to cause or causing physical harm;
- (b) placing another in fear of imminent serious physical harm;
- (c) causing another to engage involuntarily in sexual relations by force, threat or duress.

"Court", the superior, probate and family, district or Boston municipal court departments of the trial court, except when the petitioner is in a dating relationship when "Court" shall mean district, probate, or Boston municipal courts.

"Family or household members", persons who:

- (a) are or were married to one another;
- (b) are or were residing together in the same household;
- (c) are or were related by blood or marriage;
- (d) having a child in common regardless of <sup>1</sup> whether they have ever married or lived together; or
- (e) are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal courts consideration of the following factors:

(1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

"Law officer", any officer authorized to serve criminal process.

"Vacate order", court order to leave and remain away from a premises and surrendering forthwith any keys to said premises to the plaintiff. The defendant shall not damage any of the plaintiff's belongings or those of any other occupant and shall not shut off or cause to be shut off any utilities or mail delivery to the plaintiff. In the case where the premises designated in the vacate order is a residence, so long as the plaintiff is living at said residence, the defendant shall not interfere in any way with the plaintiff's right to possess such residence, except by order or judgment of a court of competent jurisdiction pursuant to appropriate civil eviction proceedings, a petition to partition real estate, or a proceeding to divide marital property. A vacate order may include in its scope a household, a multiple family dwelling and the plaintiff's workplace. When issuing an order to vacate the plaintiff's workplace, the presiding justice must consider whether the plaintiff and defendant work in the same location or for the same employer.

## 209A § 2.

### Venue

Proceedings under this chapter shall be filed, heard and determined in the superior court department or the Boston municipal court department or respective divisions of the probate and family or district court departments having venue over the plaintiff's residence. If the plaintiff has left a residence or household to avoid abuse, such plaintiff shall have the option of commencing an action in the court having venue over such prior residence or household, or in the court having venue over the present residence or household.



**Remedies; period of relief**

A person suffering from abuse from an adult or minor family or household member may file a complaint in the court requesting protection from such abuse, including, but not limited to, the following orders:

- (a) ordering the defendant to refrain from abusing the plaintiff, whether the defendant is an adult or minor;
- (b) ordering the defendant to refrain from contacting the plaintiff, unless authorized by the court, whether the defendant is an adult or minor;
- (c) ordering the defendant to vacate forthwith and remain away from the household, multiple family dwelling, and workplace. Notwithstanding the provisions of section thirty-four B of chapter two hundred and eight, an order to vacate shall be for a fixed period of time, not to exceed one year, at the expiration of which time the court may extend any such order upon motion of the plaintiff, with notice to the defendant, for such additional time as it deems necessary to protect the plaintiff from abuse;
- (d) awarding the plaintiff temporary custody of a minor child;
- (e) ordering the defendant to pay temporary support for the plaintiff or any child in the plaintiff's custody or both, when the defendant has a legal obligation to support such a person. In determining the amount to be paid, the court shall apply the standards established in the child support guidelines;
- (f) ordering the defendant to pay the person abused monetary compensation for the losses suffered as a direct result of such abuse. Compensatory losses shall include, but not be limited to, loss of earnings or support, costs for restoring utilities, out-of-pocket losses for injuries sustained, replacement costs for locks or personal property removed or destroyed, medical and moving expenses and reasonable attorney's fees;
- (g) ordering the plaintiff's address to be impounded as provided in section nine;
- (h) ordering the defendant to refrain from abusing or contacting the plaintiff's child, or child in plaintiff's care or custody, unless authorized by the court;
- (i) the judge may recommend to the defendant that the defendant attend a recognized batterer's treatment program.

No filing fee shall be charged for the filing of the complaint. Neither the plaintiff nor the plaintiff's attorney shall be charged for certified copies of any orders entered by the court, or any copies of the file reasonably required for future court action or as a result of the loss or destruction of plaintiff's copies.

Any relief granted by the court shall be for a fixed period of time not to exceed one year. Every order shall on its face state the time and date the order is to expire and shall include the date and time that the matter will again be heard. If the plaintiff appears at the court at the date and time the order is to expire, the court shall determine whether or not to extend the order for any additional time reasonably necessary to protect the plaintiff or to enter a permanent order. When the expiration date stated on the order is on a weekend day or holiday, or a date when the court is closed to business, the order shall not expire until the next date that the court is open to business. The plaintiff may appear on such next court business day at the time designated by the order to request that the order be extended. The court may also extend the order upon motion of the plaintiff, for such additional time as it deems necessary to protect from abuse the plaintiff or any child in the plaintiff's care or custody. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order, of allowing an order to expire or be vacated, or for refusing to issue a new order.

The court may modify its order at any subsequent time upon motion by either party. When the plaintiff's address is impounded and the defendant has filed a motion to modify the court's order, the court shall be responsible for notifying the plaintiff. In no event shall the court disclose any impounded address.

No order under this chapter shall in any manner affect title to real property.

No court shall compel parties to mediate any aspect of their case. Although the court may refer the case to the family service office of the probation department or victim/witness advocates for information gathering purposes, the court shall not compel the parties to meet together in such information gathering sessions.

### **209A § 3 (Cont.)**

A court shall not deny any complaint filed under this chapter solely because it was not filed within a particular time period after the last alleged incident of abuse.

A court may issue a mutual restraining order or mutual no-contact order pursuant to any abuse prevention action only if the court has made specific written findings of fact. The court shall then provide a detailed order, sufficiently specific to apprise any law officer as to which party has violated the order, if the parties are in or appear to be in violation of the order.

Any action commenced under the provisions of this chapter shall not preclude any other civil or criminal remedies. A party filing a complaint under this chapter shall be required to disclose any prior or pending actions involving the parties for divorce, annulment, paternity, custody or support, guardianship, separate support or legal separation, or abuse prevention.

If there is a prior or pending custody support order from the probate and family court department of the trial court, an order issued in the superior, district or Boston municipal court departments of the trial court pursuant to this chapter may include any relief available pursuant to this chapter except orders for custody or support.

If the parties to a proceeding under this chapter are parties in a subsequent proceeding in the probate and family court department for divorce, annulment, paternity, custody or support, guardianship or separate support, any custody or support order or judgment issued in the subsequent proceeding shall supersede any prior custody or support order under this chapter.

### **209A § 4**

#### **Temporary orders; notice; hearing**

Upon the filing of a complaint under this chapter, the court may enter such temporary orders as it deems necessary to protect a plaintiff from abuse, including relief as provided in section three. Such relief shall not be contingent upon the filing of a complaint for divorce, separate support, or paternity action.

If the plaintiff demonstrates a substantial likelihood of immediate danger of abuse, the court may enter such temporary relief orders without notice as it deems necessary to protect the plaintiff from abuse and shall immediately thereafter notify the defendant that the temporary orders have been issued. The court shall give the defendant an opportunity to be heard on the question of continuing the temporary order and of granting other relief as requested by the plaintiff no later than ten court business days after such orders are entered.

Notice shall be made by the appropriate law enforcement agency as provided in section seven.

If the defendant does not appear at such subsequent hearing, the temporary orders shall continue in effect without further order of the court.



## **209A § 5.**

### **Granting of relief when court closed; certification**

When the court is closed for business, any justice of the superior, probate and family, district or Boston municipal court departments may grant relief to the plaintiff as provided under section four if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief administrative justice and shall deliver a copy of such order on the next court day to the clerk-magistrate of the court having venue and jurisdiction over the matter. If relief has been granted without the filing of a complaint pursuant to this section of this chapter, then the plaintiff shall appear in court on the next available business day to file said complaint. Notice to the plaintiff and defendant and an opportunity for the defendant to be heard shall be given as provided in said section four.

Any order issued under this section and any documentation in support thereof shall be certified on the next court day by the clerk-magistrate or register of the court issuing such order to the court having venue and jurisdiction over the matter. Such certification to the court shall have the effect of commencing proceedings under this chapter and invoking the other provisions of this chapter but shall not be deemed necessary for an emergency order issued under this section to take effect.

## **209A § 6**

### **Powers of police**

Whenever any law officer has reason to believe that a family or household member has been abused or is in danger of being abused, such officer shall use all reasonable means to prevent further abuse. The officer shall take, but not be limited to the following action:

(1) remain on the scene of where said abuse occurred or was in danger of occurring as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer. This shall include, but not be limited to remaining in the dwelling for a reasonable period of time;

(2) assist the abused person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary;

(3) assist the abused person in locating and getting to a safe place; including but not limited to a designated meeting place for a shelter or a family member's or friend's residence. The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances;

(4) give such person immediate and adequate notice of his or her rights. Such notice shall consist of handing said person a copy of the statement which follows below and reading the same to said person. Where said person's native language is not English, the statement shall be then provided in said person's native language whenever possible.

"You have the right to appear at the Superior, Probate and Family, District or Boston Municipal Court, if you reside within the appropriate jurisdiction, and file a complaint requesting any of the following applicable orders: (a) an order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household, building or workplace; (c) an order awarding you custody of a minor child; (d) an order directing your attacker to pay support for you or any minor child in your custody, if the attacker has a legal obligation of support; and (e) an order directing your attacker to pay you for losses suffered as a result of abuse, including medical and moving expenses, loss of earnings or support, costs for restoring utilities and replacing locks, reasonable attorney's fees and other out-of-pocket losses for injuries and property damage sustained.

For an emergency on weekends, holidays, or weeknights the police will refer you to a justice of the superior, probate and family, district, or Boston municipal court departments.



209A § 6 (Cont.)

You have the right to go to the appropriate district court or the Boston municipal court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or a friend's residence, or a similar place of safety.

You may request a copy of the police incident report at no cost from the police department."

The officer shall leave a copy of the foregoing statement with such person before leaving the scene or premises.

(5) assist such person by activating the emergency judicial system when the court is closed for business;

(6) inform the victim that the abuser will be eligible for bail and may be promptly released; and

(7) arrest any person a law officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to section eighteen, thirty-four B or thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, section three, four or five of this chapter, or sections fifteen or twenty of chapter two hundred and nine C. When there are no vacate, restraining, or no-contact orders or judgments in effect, arrest shall be the preferred response whenever an officer witnesses or has probable cause to believe that a person:

(a) has committed a felony;

(b) has committed a misdemeanor involving abuse as defined in section one of this chapter;

(c) has committed an assault and battery in violation of section thirteen A of chapter two hundred and sixty-five.

The safety of the victim and any involved children shall be paramount in any decision to arrest. Any officer arresting both parties must submit a detailed, written report in addition to an incident report, setting forth the grounds for dual arrest.

No law officer investigating an incident of domestic violence shall threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

No law officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a domestic violence incident for an arrest based on probable cause when such officer acted reasonably and in good faith and in compliance with this chapter and the statewide policy as established by the secretary of public safety.

Whenever any law officer investigates an incident of domestic violence, the officer shall immediately file a written incident report in accordance with the standards of the officer's law enforcement agency and, wherever possible, in the form of the National Incident-Based Reporting System, as defined by the Federal Bureau of Investigation. The latter information may be submitted voluntarily by the local police on a monthly basis to the crime reporting unit of the criminal history systems board.

The victim shall be provided a copy of the full incident report at no cost upon request to the appropriate law enforcement department.

When a judge or other person authorized to take bail bails any person arrested under the provisions of this chapter, he shall make reasonable efforts to inform the victim of such release prior to or at the time of said release.

When any person charged with or arrested for a crime involving abuse under this chapter is released from custody, the court or the emergency response judge shall issue, upon the request of the victim, a written no-contact order prohibiting the person charged or arrested from having any contact with the victim and shall use all reasonable means to notify the victim immediately of release from custody. The victim shall be given at no cost a certified copy of the no-contact order.



**Court orders; service; enforcement; violations**

Whenever the court orders under sections eighteen, thirty-four B, and thirty-four C of chapter two hundred and eight, section thirty-two of chapter two hundred and nine, sections three, four and five of this chapter, or sections fifteen and twenty of chapter two hundred and nine C, the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order and one copy of the complaint and summons forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant, together with a copy of the complaint, order and summons. The law enforcement agency shall promptly make its return of service to the court.

Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order. The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated and shall direct the agency to destroy all record of such vacated order and such agency shall comply with that directive.

Each abuse prevention order issued shall contain the following statement: **VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.**

Any violation of such order shall be punishable by a fine of not more than five thousand dollars, or by imprisonment for not more than two and one-half years in a house of correction, or by both such fine and imprisonment. Where the defendant has no prior record of any crime of violence and where the court believes, after evaluation by a certified or provisionally certified batterer's treatment program, that the defendant is amenable to treatment, the court may, in addition to any other penalty, order appropriate treatment as specified in this section. If a defendant ordered to undergo treatment has received a suspended sentence, the original sentence shall be reimposed if the defendant fails to participate in said program as required by the terms of his probation.

When a defendant has been ordered to participate in a treatment program pursuant to this section, the defendant shall be required to regularly attend a certified or provisionally certified batterer's treatment program. To the extent permitted by professional requirements of confidentiality, said program shall communicate with local battered women's programs for the purpose of protecting the victim's safety. Additionally, it shall specify the defendant's attendance requirements and keep the probation department informed of whether the defendant is in compliance.

In addition to, but not in lieu of, such orders for treatment, if the defendant has a substance abuse problem, the court may order appropriate treatment for such problem. All ordered treatment shall last until the end of the probationary period or until the treatment program decides to discharge the defendant, whichever comes first. When the defendant is not in compliance with the terms of probation, the court shall hold a revocation of probation hearing. To the extent possible, the defendant shall be responsible for paying all costs for court ordered treatment.

In each instance where there is a violation of an abuse prevention order, the court may order the defendant to pay the plaintiff for all damages including, but not limited to, cost for shelter or emergency housing, loss of earnings or support, out-of-pocket losses for injuries sustained or property damaged, medical expenses, moving expenses, cost for obtaining an unlisted telephone number, and reasonable attorney's fees.

Any such violation may be enforced in the superior, the district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

The provisions of section eight of chapter one hundred and thirty-six shall not apply to any order, complaint or summons issued pursuant to this section.



## **209A § 8**

**Address of plaintiff; exclusion from court documents; confidentiality of records**

Upon the request of the plaintiff, the court shall impound the plaintiff's address by excluding same from the complaint and from all other court documents which are available for public inspection, and shall ensure that the address is kept confidential from the defendant and defendant's attorney.

The records of cases arising out of an action brought under the provisions of this chapter where the plaintiff or defendant is a minor shall be withheld from public inspection except by order of the court; provided, that such records shall be open, at all reasonable times, to the inspection of the minor, said minor's parent, guardian, attorney, and to the plaintiff and the plaintiff's attorney, or any of them.

## **209A § 9.**

**Form of complaint; promulgation**

The administrative justices of the superior court, probate and family court, district court, and the Boston municipal court departments shall jointly promulgate a form of complaint for use under this chapter which shall be in such form and language to permit a plaintiff to prepare and file such complaint *pro se*.



M.G.L. c. 208: DIVORCE

**208 § 18.**

**Pendency of action for divorce; protection of personal liberty of spouse; restraint orders authorized**

The probate court in which the action for divorce is pending may, upon petition of the wife, prohibit the husband, or upon petition of the husband, prohibit the wife from imposing any restraint upon her or his personal liberty during the pendency of the action for divorce. Upon the petition of the husband or wife or the guardian of either, the court may make such further order as it deems necessary to protect either party or their children, to preserve the peace or to carry out the purposes of this section relative to restraint on personal liberty.

Amended by St.1989, c. 341, § 93.

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**208 § 34B**

**Order to vacate marital home**

Any court having jurisdiction of actions for divorce, or for nullity of marriage or of separate support or maintenance, may, upon commencement of such action and during the pendency thereof, order the husband or wife to vacate forthwith the marital home for a period of time not exceeding ninety days, and upon further motion for such additional certain period of time, as the court deems necessary or appropriate if the court finds, after a hearing, that the health, safety or welfare of the moving party or any minor children residing with the parties would be endangered or substantially impaired by a failure to enter such an order. The opposing party shall be given at least three days' notice of such hearing and may appear and be heard either in person or by his attorney. If the moving party demonstrates a substantial likelihood of immediate danger to his or her health, safety or welfare or to that of such minor children from the opposing party, the court may enter a temporary order without notice, and shall immediately thereafter notify said opposing party and give him or her an opportunity to be heard as soon as possible but not later than five days after such order is entered on the question of continuing such temporary order. The court may issue an order to vacate although the opposing party does not reside in the marital home at the time of its issuance, or if the moving party has left such home and has not returned there because of fear for his or her safety or for that of any minor children.

Added by St.1970, c. 472. Amended by St.1975, c. 321; St.1975, c. 400, § 35.



**208 § 34C.**

**Orders to vacate marital home and orders of restraint; notice to law enforcement agencies; procedures; violations**

Whenever a division of the probate and family court department issues an order to vacate under the provisions of section thirty-four B, or an order prohibiting a person from imposing any restraint on the personal liberty of another person under section eighteen or under the provisions of section thirty-two of chapter two hundred and nine or section three, four or five of chapter two hundred and nine A or section fifteen or twenty of chapter two hundred and nine C or an order for custody pursuant to any abuse prevention action, the register shall transmit two certified copies of each order forthwith to the appropriate law enforcement agency which shall serve one copy of each such order upon the defendant. Unless otherwise ordered by the court, service shall be by delivering a copy in hand to the defendant. Law enforcement officers shall use every reasonable means to enforce such order. Law enforcement agencies shall establish procedures adequate to insure that an officer at the scene of an alleged violation of such order may be informed of the existence and terms of such order.

The court shall notify the appropriate law enforcement agency in writing whenever any such order is vacated by the court and shall direct the agency to destroy all records of such vacated order and such agency shall comply with such directive.

Any violation of such order shall be punishable by a fine of not more than five thousand dollars or by imprisonment for not more than two and one-half years in the house of correction, or both such fine and imprisonment. Each such order issued shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE.

Any such violation may be enforced in the superior or district or Boston municipal court departments. Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order.

## 209C § 15

### Temporary orders; final judgments; enforcement

At any time pursuant to an action under this chapter, the court may upon motion of any party or on its own motion issue a temporary order or final judgment including a vacate, restraining or no-contact order to protect a party or child. Any such order or judgment, including a custody provision if issued by a probate court, shall be served as specified under sections four and seven of chapter two hundred and nine A and shall contain the following statement: VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE. Criminal violations of such orders shall be enforced pursuant to section seven of chapter two hundred and nine A.

The court may, in like manner, upon motion of any party or of a next friend on behalf of the child, and upon notice to the other parties, enter temporary orders providing for the support of the child or relative to the care and custody of the child or visitation rights with the child in accordance with the provisions of sections nine and ten.

All orders entered pursuant to this section, unless modified or revoked pursuant to section twenty or twenty-three of chapter two hundred and nine C, shall continue in force and be incorporated in the final judgment. Violations of any order or judgment may be punished as contempt.

## 209C § 20

### Modification of judgments; jurisdiction

A court with original jurisdiction pursuant to section three has continuing jurisdiction, upon a complaint filed by a person or agency entitled to file original actions, to modify judgments of support, custody or visitation whenever a substantial change in the circumstances of the parties or the child has occurred, provided however, that no modification concerning custody or visitation shall be granted unless the court also finds it to be in the child's best interests to do so. Except as restricted by section twenty-three, the court may also modify a judgment to protect a party or child.

**265 § 13A**

**Assault or assault and battery; punishment**

Whoever commits an assault or an assault and battery upon another shall be punished by imprisonment for not more than two and one half years in a house of correction or by a fine of not more than five hundred dollars.

A summons may be issued instead of a warrant for the arrest of any person upon a complaint for a violation of any provision of this section if in the judgment of the court or justice receiving the complaint there is reason to believe that he will appear upon a summons.



## **Pre-Court Forms and Procedures**



# APPLICATION FOR ABUSE PREVENTION ORDER ABUSE PREVENTION ORDER

## FOR USE BY POLICE DEPARTMENTS AFTER COURT HOURS

"When the court is closed for business, any justice of the superior, probate and family, district or Boston municipal court departments may grant relief to the plaintiff... if the plaintiff demonstrates a substantial likelihood of immediate danger of abuse. In the discretion of the justice, such relief may be granted and communicated by telephone to an officer or employee of an appropriate law enforcement agency, who shall record such order on a form of order promulgated for such use by the chief administrative justice and shall deliver a copy of such order on the next court day to the clerk-magistrate of the court having venue and jurisdiction over the matter....

"When any person charged with or arrested for a crime involving abuse under this chapter is released from custody, the court or the emergency response judge shall issue, upon request of the victim, a written no-contact order prohibiting the person charged or arrested from having any contact with the victim and shall use all reasonable means to notify the victim immediately of release from custody. The victim shall be given at no cost a certified copy of the no-contact order."

-G.L. c. 209A, §§ 5 & 6

### INSTRUCTIONS FOR POLICE OFFICERS

- 1. USE OF THIS FORM.** This forms package has been promulgated by the Chief Administrative Justice of the Massachusetts Trial Court pursuant to G.L. c. 209A §§ 5 & 6 for use by police departments to record an Abuse Prevention Order issued by a judge over the telephone when the court is closed for business. Additional supplies of this forms package may be obtained from your local District Court. Please keep any supplies of these forms under adequate security to prevent misuse.
- 2. SEPARATING THE TWO FORM SETS IN THIS PACKAGE.** First remove this instruction sheet from the forms package. Then separate the two form sets that make up this package (one is the "Complaint," the other is the "Order") by pulling apart the two form stubs that hold each form set together. Do not separate the individual parts of each form which are attached to the two form stubs.
- 3. COMPLAINT.** It is preferable to have the plaintiff complete and sign the Complaint form set before contacting a judge, if the plaintiff is able to do so. Please print in ballpoint pen and press hard enough so that all four parts are legible. There are instructions which the plaintiff may refer to on the back of the Complaint form set.  
In appropriate circumstances, a judge may issue an Order without the plaintiff having completed and signed a written Complaint. If the judge does so, please discard the Complaint form set and advise the plaintiff that G.L. c. 209A, § 5 requires the plaintiff to appear in court on the next business day to file such a Complaint.
- 4. AFFIDAVIT.** After the Complaint form set has been completed and signed, separate the three parts from the form stub that holds them together. Turn over the original (first white) part and ask the plaintiff to describe the details of the abuse on the "Affidavit" form printed there. When the Affidavit is complete, please indicate by your signature that you have witnessed the plaintiff's signature on the Affidavit.  
In appropriate circumstances, a judge may dispense with the need for an Affidavit. If the judge does so, leave the Affidavit form blank.
- 5. ORDER.** Read or summarize the Complaint and Affidavit over the telephone as requested by the judge. If the judge issues an Order, please complete Section A of the Order form set, item by item, as the judge directs. Please print in ballpoint pen and press hard enough so that all six parts (white original, white probation copy, pink, blue, yellow and green copies) are legible. Leave the space for "Docket No." blank, but please remember to enter the name and address of the court where the judge makes the Order returnable. Print your name and police department, and print the name of the judge issuing the Order, in the appropriate spaces. Do not write in Sections B and C of the form. Print the name of the "First or Administrative Justice" as indicated by the issuing judge. Leave blank the space for the Clerk-Magistrate or the Register of Probate to attest the Order.
- 6. COLLATE AND DISTRIBUTE COPIES.** Separate the six parts of the Order form set from the form stub that holds them together. If the plaintiff has completed the Complaint form, match up and staple together the four copies of the Complaint form with the matching-color copies of the Order form: the original white (court) copies, the white (probation) copies, the pink (plaintiff's) copies, and the yellow (defendant's) copies.  
Give the pink copies of the Complaint and Order to the plaintiff.  
Deliver the white (original) copies and the white (probation) copies of the Complaint and Order on the next business day to the clerk-magistrate or register of the court where the Order is returnable. If the plaintiff's address has been impounded, please take appropriate care to ensure that these white copies of the Complaint, which bear the plaintiff's address, are not seen by the defendant or the defendant's counsel.  
Arrange for the yellow copies of the Complaint and Order to be served on the defendant as soon as possible. If service on the defendant cannot be made before the date and time of hearing shown in the Order, service of additional Orders may be necessary.  
The two remaining copies of the Order are for police use: the blue copy of the order is for your records; the green copy of the Order may be used for the return of service that must be filed with the court.



PART 1	<input type="checkbox"/> BOSTON MUNICIPAL COURT <input type="checkbox"/> DISTRICT COURT	<input type="checkbox"/> PROBATE & FAMILY COURT <input type="checkbox"/> SUPERIOR COURT
PART 2	NAME OF PLAINTIFF (the person seeking protection)	
PART 3	NAME OF DEFENDANT (the person causing abuse)	
3A	Write your address here if you are NOT asking the Court to keep it confidential _____ _____ _____ Daytime Phone No: (____) _____	DEF. DATE OF BIRTH _____ DEFENDANT'S ALIAS, IF ANY _____ DEFENDANT'S ADDRESS _____ <div style="display: flex; justify-content: flex-end;"> <input type="checkbox"/> MALE  <input type="checkbox"/> FEMALE          DEFENDANT'S DAYTIME PHONE _____       </div>
3B	Write your address here only if you are asking the Court to keep it CONFIDENTIAL (that is, impounded). _____ _____ _____ Daytime Phone No: (____) _____	DEFENDANT'S SOC. SEC. NO. _____ DEFENDANT'S PLACE OF BIRTH _____ DEFENDANT'S MOTHER'S MAIDEN NAME (First & Last) _____ DEFENDANT'S FATHER'S NAME (First & Last) _____
PART 4	If you left a former residence to avoid abuse, write that address here: _____	
PART 5	Name of your attorney (if any): _____ Phone No: (____) _____	
PART 6	I <input type="checkbox"/> am <input type="checkbox"/> am not under the age of eighteen. The defendant <input type="checkbox"/> is <input type="checkbox"/> is not under the age of eighteen.	
PART 7	Are there any prior or pending court actions in any state or country involving you and the defendant for divorce, annulment, paternity, child custody or support, guardianship, separate support, legal separation, or abuse prevention? <input type="checkbox"/> No <input type="checkbox"/> Yes If Yes, give court, type of case, date and (if available) docket number. _____	
PART 8	CHECK AS MANY AS APPLY: The defendant and I: <input type="checkbox"/> are currently married to each other. <input type="checkbox"/> were formerly married to each other. <input type="checkbox"/> are not married but we are related to each other by blood or marriage; specifically, the defendant is my _____ <input type="checkbox"/> are the parents of one or more children. <input type="checkbox"/> are not related but we now live in the same household. <input type="checkbox"/> are or were in a dating or engagement relationship of the following nature: Date relationship began: _____ Nature of relationship: _____ Frequency of contact during relationship: _____ If it has ended, date relationship ended: _____	

On or about (dates) \_\_\_\_\_ I suffered abuse when the defendant:

☐ attempted to cause me physical harm.  
☐ caused me physical harm.

☐ placed me in fear of imminent serious physical harm.  
☐ caused me unwillingly to engage in sexual relations by force, threat of force, or duress.

Therefore:

☐ 1  
☐ 2  
☐ 3  
☐ 4  
☐ 5  
☐ 6  
☐ 7  
☐ 8  
☐ 9  
☐ 10

1. I ask the Court to order the defendant to stop abusing me.

2. I ask the Court to order the defendant not to contact me, or any children listed below, unless authorized by the Court.

3. I ask the Court to order the defendant to leave and remain away from my residence which is located at: \_\_\_\_\_

If this is an apartment building or other multiple family dwelling, check here: ☐

4. I ask the Court to impound my address to prevent its disclosure to the defendant, the defendant's attorney, or the public.  
Do not check item 4 if you wrote your address in Part 3A above.

5. I ask the Court to order the defendant to leave and remain away from my workplace which is located at: \_\_\_\_\_

6. I ask the Court to award me temporary custody of the following children under 18:

N _____	DATE _____	OF _____
A _____	BIRTH _____	
M _____		
E _____		

You may not obtain an Order from the Boston Municipal Court or a District or Superior Court covering items (6) or (7) in Part 10 if there is a prior or pending Order for custody or support from the Probate and Family Court.

7. I ask the Court to order the defendant, who has a legal obligation to do so, to pay temporary support: ☐ for me, ☐ for any children in my custody, ☐ for both.

8. I ask the Court to order the defendant to pay me \$ \_\_\_\_\_ in compensation for the following losses suffered as a direct result of the abuse: \_\_\_\_\_

9. I ask the Court to order the following: \_\_\_\_\_

10. I ask the Court to order the relief I have requested above, except for items (7) and (8), without advance notice to the defendant because there is a substantial likelihood of immediate danger of abuse. I understand that if the Court issues such a temporary Order, the Court will schedule a hearing within 10 court business days to determine whether such a temporary Order should be continued, and that I must appear in court on that day if I wish the Order to be continued.

DATE

PLAINTIFF'S SIGNATURE

Describe in detail the most recent incidents of abuse. State what happened, the dates, who did what to whom and describe any injuries. Also describe any history of abuse.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

If more space is needed, attach additional pages and check this box ☐

I declare under penalty of perjury that all statements of fact made above, or in any additional pages attached, are true.

DATE SIGNED \_\_\_\_\_

PLAINTIFF'S SIGNATURE

**X**

WITNESSED BY

PRINTED NAME OF WITNESS

TITLE RANK OF WITNESS

**x**



# INSTRUCTIONS TO THE PLAINTIFF

## 1. HOW DOES THE LAW PROTECT YOU FROM ABUSE?

Under chapter 209A of the Massachusetts General Laws, judges can make Orders to protect people from abuse by family or household members. These orders will be recorded and enforced by law enforcement agencies. They are commonly called "Abuse Prevention Orders" or "Restraining Orders" or "209A Orders."

"Abuse" includes causing you physical harm, attempting to cause you physical harm, placing you in fear of imminent serious physical harm, or causing you to engage in sexual relations against your will by force, threat or duress.

A "family or household member" may include your spouse or former spouse, a relative by blood or marriage, the other parent of your child, a person who lives or formerly lived in your household, or a person who is or was in a substantive dating or engagement relationship with you.

## 2. WHERE DO YOU OBTAIN SUCH AN ORDER?

You may request such an Order from a judge of any of the following courts: the Boston Municipal Court, the District Court, the Probate and Family Court, or the Superior Court. To do so, you must go to the office of the Clerk-Magistrate or the Register of Probate at the courthouse ("division") in the area in which you live. You can find out from your local police department which court division is in the area where you live. If you have left your residence to avoid abuse, you may also go to the court in the area of your former residence.

In an emergency that occurs after court hours or on weekends, you may ask your local police to put you in contact with a judge.

## 3. HOW DO YOU OBTAIN SUCH AN ORDER?

Fill out entirely the front of this application ("Complaint"). There is no filing fee. You are the "plaintiff". The person who you allege is abusing you is the "defendant".

Part 3. If you are not asking the court to keep your current address confidential, write your address in Part 3A and leave Part 3B blank. If you are asking the court to keep your address confidential (by "impounding" it), write your address in Part 3B and leave Part 3A blank. An address written in Part 3B will appear only on the first copy of this form, which will be kept by the court. If you prefer, you may write your name and address on a separate piece of paper, seal it in an envelope marked "Plaintiff's Address — Confidential," and staple the envelope to the court (white) copy of this form.

Part 6. If either you or the defendant is under the age of 18, indicate that in Part 6. The law provides that such cases are not open to public inspection, and are available only to the plaintiff, the plaintiff's attorney, the person under 18, or a parent or guardian of the person under 18. If you and the defendant are both over 18, court records of this matter will generally be open to public inspection. If the judge orders your address impounded, it will not be publicly available. If you have good reasons to ask the judge to keep other parts of the court record confidential, you may file a written request (a "motion") asking the judge to do so. Usually a general preference for privacy is not itself a sufficient reason to permit court records to be kept confidential.

Part 7. If you answer "Yes", please bring with you to the courthouse any legal papers you have from any such court proceeding.

Part 10. Indicate the type of abuse you have suffered, and the relief you are requesting. In item 8, list any financial loss you have suffered as a direct result of the abuse. Such losses may include, but are not limited to, lost earnings or support, costs for restoring utilities, replacements costs for locks or personal property removed or destroyed, medical and moving expenses, and reasonable attorneys' fees. Generally the Court will allow requests under items (7) and (8) only after the defendant has been given an opportunity to be heard.

If you are requesting relief after court hours, or if the Court otherwise requires, you must write out a sworn statement describing the abuse (an "affidavit"). If an affidavit is required, after filing out the front of this form, detach the first (white) copy from the remaining copies, turn it over and write your affidavit on the back.

### IF YOU ARE REQUESTING CUSTODY OF A CHILD

If you are requesting that the Court give you temporary custody of a minor child or children, you must file along with this form a sworn statement (an "affidavit") indicating whether there are any other pending or concluded court proceedings involving the care or custody of that child or children, either in Massachusetts or in any other state or country. The Clerk-Magistrate's office or the Register of Probate's office at the courthouse will provide you with a blank "Affidavit Disclosing Care and Custody Proceedings" to fill out and sign.

If there is a prior or pending Order for support or for child custody from the Probate and Family Court, you may not obtain an order from the Boston Municipal Court or a District or Superior Court regarding support or child custody.

"You have the right to appear at the Superior, Probate and Family, District or Boston Municipal Court, if you reside within the appropriate jurisdiction, and file a complaint requesting any of the following applicable orders: (a) an order restraining your attacker from abusing you; (b) an order directing your attacker to leave your household, building or workplace; (c) an order awarding you custody of a minor child; (d) an order directing your attacker to pay support for you or any minor child in your custody; (e) if the attacker has a legal obligation of support, and (f) an order directing your attacker to pay you for losses suffered as a result of abuse, including medical and moving expenses, loss of earnings or support, costs for restoring utilities and replacing locks, reasonable attorneys' fees and other out-of-pocket losses for injuries and property damage sustained.

"For an emergency on weekends, holidays or weeknights, the police will refer you to a justice of the superior, probate and family, district or Boston municipal court departments.

"You have the right to go to the appropriate district court or the Boston municipal court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

"If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

"If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or a friend's home, or a similar place of safety.

"You may request a copy of the police incident report at no cost from the police department."

GENERAL LAWS, CHAPTER 209A, SECTION 6

"Ud. tiene derecho a radicar una querrela ante el tribunal que tenga jurisdicción sobre su vecindario, ya sea el tribunal superior, el de sucesiones y relaciones de familia, el de distrito, o el municipal de Boston, y solicitar la(s) orden(es) correspondiente(s): (a) una orden que le impida a su agresor continuar maltratándolo(a); (b) una orden que le indique al agresor que tiene que abandonar el hogar, el edificio o el lugar donde trabaja; (c) una orden que le otorgue a Ud. la custodia de un menor de edad; (d) una orden indicando al agresor que tiene que pagarse pensión alimenticia a Ud. y a cualquier menor de edad bajo su custodia, siempre y cuando el agresor tenga la obligación legal de pagar por su manutención; (e) una orden que le indique al agresor que le pague por las pérdidas sufridas a consecuencia del maltrato, incluyendo gastos médicos y de mudanza; pérdida de salario o pensión alimenticia; gastos incurridos en el restablecimiento de servicios públicos (gas, electricidad, teléfono) y cambio de cerraduras; honorarios razonables de abogados y otros gastos personales incurridos a consecuencia de lesiones físicas o daños a la propiedad.

"En casos de emergencia los fines de semana, días feriados o durante horas de la noche, la policía le referirá a un juez del tribunal superior, el de sucesiones y relaciones de familia, el de distrito, o el municipal de Boston.

"Ud. tiene derecho a presentarse ante el tribunal de distrito apropiado o el municipal de Boston, y a obtener una querrela criminal por motivo de amenazas, acoso, agresión y agresión con arma mortífera, agresión con intento de asesinato y otras ofensas similares.

"Si necesita servicios médicos, tiene derecho a pedirle al policía que se encuentre presente que le lleva al hospital más cercano o que le ayude a obtener dichos servicios.

"Si cree que necesita protección policiaca para garantizar su seguridad física, tiene derecho a pedirle al policía presente que permanezca en el lugar hasta tanto Ud. y sus hijos puedan marcharse o hasta tanto se le garantice su seguridad personal. También puede pedirle al policía que le ayude a identificar un sitio que sea seguro para Ud. y que le lleve a dicho lugar incluyendo, pero sin limitarse a, un punto de reunión designado para un refugio o la residencia de un pariente o un amigo(a), o cualquier otro lugar similar donde se sienta seguro(a).

"Puede solicitar al departamento de la policía copia del informe relatando el incidente, sin costo alguno."

LEYES GENERALES, c. 209A, SECCION 6



DEFENDANT'S NAME AND ADDRESS

DEFENDANT'S MOTHER'S MAIDEN NAME (First &amp; Last)

DEFENDANT'S FATHER'S NAME (First &amp; Last)

DEFENDANT'S S.S. NO. DEFENDANT'S ALIAS, IF ANY

DEF DAYTIME PHONE

**A. THE COURT HAS ISSUED THE FOLLOWING ORDERS TO THE DEFENDANT:** (only items checked shall apply)

☐ This Order was issued without advance notice because the Court determined that there is a substantial likelihood of immediate danger of abuse.

☐ This Order was communicated by telephone from the judge named below to

Police Dept: \_\_\_\_\_

Police Officer: \_\_\_\_\_

- ☐ 1. YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF by harming or attempting to harm the plaintiff physically, or by placing the plaintiff in fear of imminent serious physical harm, or by using force, threat or duress to make the plaintiff engage in sexual relations unwillingly.
- ☐ 2. YOU ARE ORDERED NOT TO CONTACT THE PLAINTIFF or any child(ren) listed below, either in person, by telephone, in writing, or otherwise, either directly or through someone else, and to stay at least \_\_\_\_\_ yards away from them, unless you receive written permission from the Court to do otherwise.
- ☐ 3. YOU ARE ORDERED IMMEDIATELY TO LEAVE AND STAY AWAY FROM THE PLAINTIFF'S RESIDENCE which is located at:

The Court also ORDERS you: (a) to surrender any keys to that residence to the plaintiff, (b) not to damage any belongings of the plaintiff or any other occupant, (c) not to shut off or cause to be shut off any utilities or mail delivery to the plaintiff, and (d) not to interfere in any way with the plaintiff's right to possess that residence, except by appropriate legal proceedings.

☐ If this box is checked, the Court also ORDERS you immediately to leave and remain away from the entire apartment building or other multiple family dwelling in which the plaintiff's residence is located

- ☐ 4. PLAINTIFF'S ADDRESS IMPOUNDED. The Court ORDERS that the address of the plaintiff's residence is to be impounded by the Clerk-Magistrate or Register of Probate so that it is not disclosed to you, your attorney, or the public.

- ☐ 5. YOU ARE ORDERED TO STAY AWAY FROM THE PLAINTIFF'S WORKPLACE which is located at:

- ☐ 6. YOU ARE ORDERED TO SURRENDER CUSTODY of the following child(ren) to the plaintiff:

N	DATE
A	OF
M	BIRTH
E	

**VIOLATION OF  
THIS ORDER IS  
A CRIMINAL  
OFFENSE**  
punishable by  
imprisonment  
or fine or both.

- ☐ 7. YOU ARE ORDERED TO PAY SUPPORT for \_\_\_\_\_ the plaintiff \_\_\_\_\_ and the child(ren) listed above, at the rate of \$ \_\_\_\_\_ per \_\_\_\_\_ month \_\_\_\_\_ week, beginning \_\_\_\_\_, 199 \_\_\_\_\_, directly to the plaintiff, \_\_\_\_\_ through the Probation Office of this court, \_\_\_\_\_ through the Massachusetts Department of Revenue.
- ☐ 8. YOU ARE ORDERED TO COMPENSATE THE PLAINTIFF for \$ \_\_\_\_\_ in losses suffered as a direct result of the abuse, to be paid in full on or before \_\_\_\_\_, 199 \_\_\_\_\_, directly to the plaintiff, \_\_\_\_\_ through the Probation Office of this court.
- ☐ 9. YOU ARE ALSO ORDERED \_\_\_\_\_

DATE OF ORDER TIME OF ORDER \_\_\_\_\_ A.M. \_\_\_\_\_ P.M. EXPIRATION DATE OF ORDER \_\_\_\_\_ NEXT HEARING DATE at \_\_\_\_\_ A.M. \_\_\_\_\_ P.M.  
\_\_\_\_\_ PM at 4 PM in Courtroom \_\_\_\_\_

The above Order expires on the expiration date indicated above. A hearing on whether to continue and/or to modify this Order will be held on the date and time indicated.

SIGNATURE OR NAME OF JUDGE

☐ **B. PRIOR COURT ORDER EXTENDED.** After a hearing at which the defendant \_\_\_\_\_ appeared \_\_\_\_\_ did not appear, the Court has ORDERED that the prior Order dated \_\_\_\_\_, 199 \_\_\_\_\_ shall continue in effect without change until the expiration date below

DATE OF ORDER TIME OF ORDER \_\_\_\_\_ A.M. \_\_\_\_\_ P.M. EXPIRATION DATE OF ORDER \_\_\_\_\_ NEXT HEARING DATE at \_\_\_\_\_ A.M. \_\_\_\_\_ P.M.  
\_\_\_\_\_ PM at 4 PM in Courtroom \_\_\_\_\_

The above Extension of Order expires on the expiration date indicated above. A hearing on whether to continue and/or modify this Order will be held on the date and time indicated.

SIGNATURE OR NAME OF JUDGE

The plaintiff must appear at scheduled hearings, or this Order may be vacated. The defendant may appear, with or without an attorney, to oppose any extension or expansion of this Order. If the defendant does not appear, an extended or expanded Order may remain in effect for up to one year.

☐ **C. PRIOR COURT ORDER VACATED.** This Court's prior Order is vacated. Law enforcement agencies shall destroy all records of such Order.

DATE

SIGNATURE OR NAME OF JUDGE

FIRST OR ADMINISTRATIVE JUSTICE

A true copy, attest

WITNESS

Assistant Clerk-Magistrate Assistant Register of Probate

THIS ORDER IS EFFECTIVE WHEN MADE. IF YOU HAVE BEEN ORDERED TO REMAIN AWAY FROM A PARTICULAR RESIDENCE OR WORKPLACE, YOU MAY BE ARRESTED IF YOU RETURN THERE, EVEN IF YOU RETURN WITH THE PERMISSION OF THE PLAINTIFF. IF THE PLAINTIFF IS NOW WILLING TO HAVE YOU RETURN, HE OR SHE MUST APPEAR BEFORE THE COURT AND ASK THAT THIS ORDER BE ENDED. UNTIL THE COURT ALLOWS SUCH A REQUEST AND "VACATES" THIS ORDER, IT WILL REMAIN IN EFFECT.

If the plaintiff changes address of residence or workplace, the plaintiff may file a sworn affidavit stating that new address, and this Order may be reissued by the Clerk-Magistrate or Register of Probate with that new address in item 3 or 5 without further Order of the Court.

For good cause, either the plaintiff or the defendant may request the Court to modify this Order before its scheduled expiration date.

TO ANY OFFICER OF THE POLICE DEPARTMENT TO WHICH THE COURT HAS DIRECTED THIS ORDER.

PURSUANT TO G.L. c. 209A, § 6, THIS ORDER SHALL BE ENFORCED BY ANY LAW ENFORCEMENT OFFICER IN THE COMMONWEALTH WHO IS AWARE OF OR SHOWN A COPY OF THIS ORDER. IF SERVICE ON THE DEFENDANT HAS NOT YET BEEN MADE, ANY LAW ENFORCEMENT OFFICER SHALL ADVISE THE DEFENDANT OF THE TERMS OF THE ORDER AND THEN SHALL ENFORCE IT.

The YELLOW COPY of this Order must be served on the defendant immediately. Please return the GREEN COPY of this Order to the court with your return of service prior to any scheduled hearing date, or new service may be required.

The BLUE COPY of this Order is for your records.

"Whenever the court orders . . . the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant. The law enforcement agency shall promptly make its return of service to the court.

"Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order."

G.L. c. 209A § 7

ATENCIÓN ESTE ES UN AVISO OFICIAL DE LA CORTE. SI USTED NO SABE LEER INGLÉS, OBTENGA UNA TRADUCCIÓN.  
ATTENTION CEÇI EST UNE ANNONCE OFFICIALE DU PALAIS DE JUSTICE SI VOUS ÊTES INCAPABLE DE LIRE ANGLAISE, OBTENEZ UNE TRADUCTION  
ATTENZIONE IL PRESENTE È UN AVVISO UFFICIALE DAL TRIBUNALE SE NON SAPETE LEGGERE IN INGLESE, OTTENETE UNA TRADUZIONE  
ATENÇÃO ESTE É UM AVISO OFICIAL DO TRIBUNAL SE NÃO SABE LER INGLÊS, OBTENHA UMA TRADUÇÃO  
LƯU Ý DÂY LÀ THÔNG BÁO CHÍNH THỨC CỦA TÒA-ÁN. NẾU BẠN KHÔNG ĐỌC ĐƯỢC TIẾNG ANH, HÃY TÌM NGƯỜI DỊCH HỖ

注意：此份表格係官方文件。如果您不諳英文的話，可向法庭官員索取中文翻譯。



# ABUSE PREVENTION INFORMATION FORM

(Information provided by Plaintiff)

# DRAFT

COURT: \_\_\_\_\_ DOCKET#: \_\_\_\_\_ DATE: \_\_\_\_\_

\*\*\*\*\*

## ATTENTION:

TO ASSIST POLICE IN LOCATING/SERVING THE DEFENDANT AND  
PROTECTING THE PLAINTIFF, PLEASE PROVIDE AS MUCH  
INFORMATION AS POSSIBLE.

\*\*\*\*\*

PLAINTIFF'S NAME: \_\_\_\_\_ TELEPHONE#  
home: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_ work: \_\_\_\_\_  
(unless confidential or impounded) other(s): \_\_\_\_\_

PLAINTIFF'S RELATIONSHIP TO DEFENDANT? \_\_\_\_\_

## DEFENDANT'S NAME

(LAST NAME) (FIRST NAME) (MI)

\_\_\_\_\_ HEIGHT: \_\_\_\_\_  
\_\_\_\_\_ WEIGHT: \_\_\_\_\_  
ALIASES (OTHER NAMES DEFENDANT MIGHT USE) HAIR: \_\_\_\_\_  
\_\_\_\_\_ EYES: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_ SEX: \_\_\_\_\_ MALE \_\_\_\_\_ FEMALE

SOCIAL SECURITY#: \_\_\_\_\_ RACE: \_\_\_\_\_

## DESCRIPTIVE INFO:

(INCLUDE: MOUSTACHE, BEARD, GLASSES, SCARS, TATOOS, HAIR STYLE, ACNE, FRECKLES, ETC.)

PHOTOGRAPH OF DEFENDANT AVAILABLE? \_\_\_\_\_  
(PLEASE PROVIDE) PHOTO. REC'D? \_\_\_\_\_

\*\*\*\*\*

\*

*Please complete other side.*

\*

\*\*\*\*\*

Prepared By:  
Pre-court Subcommitt  
of Domestic Violence  
Roundtable 1992



DEFT. UNDERSTAND ENGLISH? \_\_\_\_\_ SPEAK ENGLISH? \_\_\_\_\_  
(IF NOT) WHAT LANGUAGE? \_\_\_\_\_

A.M. P.M.

SERVICE: BEST PLACE \_\_\_\_\_ BEST TIME \_\_\_\_\_

DEFT.'S ADDRESS: \_\_\_\_\_

TEL.# \_\_\_\_\_

VERY IMPORTANT: APT.# \_\_\_\_\_ FLOOR# \_\_\_\_\_

NAME ON MAILBOX/DOORBELL: \_\_\_\_\_

DEFT.'S EMPLOYER: \_\_\_\_\_ ADDRESS: \_\_\_\_\_

WORK HOURS: \_\_\_\_\_ POSITION/DEPT: \_\_\_\_\_

WORK TEL.#: \_\_\_\_\_

OTHER PLACES DEFT. MAY BE FOUND: \_\_\_\_\_

(Relatives, friends, hangouts, places frequented, etc.)

DEFT.'S MOTOR VEHICLE REGISTRATION PLATE#: \_\_\_\_\_

YR: MAKE: MODEL: COLOR:

## DOES DEFENDANT HAVE:

### 1. CRIMINAL RECORD?

For What?

Where?

Outside MA?

### 2. OUTSTANDING WARRANTS?

For What?

Where?

Outside MA?

### 3. PROBATION?

PAROLE?

Where?

Where?

### 4. UPCOMING COURT DATES?

When?

Where?

### 5. ACCESS TO GUNS?

Where?

What Kind?

### 6. LICENSE OR PERMIT FOR GUNS?

When?

Where?

### 7. PSYCHIATRIC/EMOTIONAL PROBLEMS?

Where?

When?

Treated/Hospitalized?

### 8. DOES DEFENDANT USE/ABUSE DRUGS?

USE/ABUSE ALCOHOL?

### 9. WILL DEFENDANT BE HOSTILE/VIOLENT TO POLICE?

# **Police Guidelines**





SUMMARY OF POLICE DOMESTIC VIOLENCE GUIDELINES  
October, 1992

Background: In response to the 1990 Amendments to c. 209A, these guidelines were developed by the Department of Public Safety to ensure uniform police procedure in responding to domestic violence calls. The following is a summary of the Police Guidelines.

2.0: G.L. c. 209A, § 6: ABUSE PREVENTION LAW

Subparts A through D detail the steps police must take in responding to domestic violence calls.

Subpart E discusses how to activate the emergency judicial system through the state police when the court is closed for business.

Subpart F requires the police to inform the victim that the abuser is eligible for bail and may be promptly released. In addition, the judge or other person authorized to take bail must make reasonable efforts to inform the victim of the abuser's imminent release. Upon request of the victim, a written no-contact order will be a condition of the abuser's release on bail. (c. 209A, § 6)

Subpart G mandates that the police arrest any person the officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contact order or judgment.

Note that where probable cause exists, Chapter 209A specifically provides for warrantless arrests even if the victim is unwilling to bring a complaint against the abuser. (c. 209A, § 6)

Subpart H states that where no orders or judgments are in effect, arrest shall be the preferred response when an officer witnesses or has probable cause to believe that a person has committed:

- (1) a felony;
- (2) an assault and battery in violation of c. 265, § 13A; or

(3) a misdemeanor involving abuse.

This provision is important because a misdemeanor involving abuse includes a "threat to commit crimes against the person or property of another." (c. 275, § 2)

Definition of "abuse" under c. 209A, § 1:

(a) attempting to cause or causing physical harm;

(b) placing another in fear of imminent physical harm; or

(c) causing another to engage involuntarily in sexual relations by force, threat, or duress.

The Guidelines set forth the statutory description of "family or household members" under c. 209A, § 1 who may bring an action for abuse protection.

Dual arrests are discouraged, because they trivialize the seriousness of domestic violence and increase the danger to victims. When dual arrests are made, officers must submit a detailed written report in addition to the incident report.

A written incident report must be filed whether or not an arrest was made. Upon request, the victim is entitled to receive a copy of the incident report at no cost.

Civil liability: A police officer will not be civilly liable for making an arrest upon probable cause when the officer acted reasonably, in good faith and in accordance with c. 209A and the Guidelines. (c. 209A, § 6)

3.0: PROCEDURES:

3.1 Response

Subparts A through E describe how officers should conduct themselves when they arrive at the scene of a domestic violence call.

3.2 Investigation: Officers are reminded that the same standards for probable cause apply to domestic violence offenses as for any other crimes.

Subparts A(1) through A(4) describe "private premises" and when officers must leave the scene.

Subpart B notes that each party must have the opportunity to relate his or her story individually and confidentially.

Subpart C directs officers to collect information in several categories. For example:

Whether firearms are present and who owns them;

Whether there has been past history of disputes and if any orders or judgments are in effect. Violation of any such order would trigger the mandatory arrest provision of c. 209A, § 6;

Whether outstanding warrants exist;

Whether a "substantive dating relationship" exists. Criteria the court will use in its determination is listed. (c. 209A, § 1(e));

Police must also provide victims with addresses and telephone numbers of crisis centers, shelters, and where appropriate, Victim Witness Assistance staff from the local District Attorney's office.

3.3 Children: The welfare and safety of children who are present at a domestic dispute must be a major consideration. Officers are directed to make oral and written reports to DSS pursuant to c. 119, § 51A if they believe child abuse has occurred.

3.4 Property: Police should warn any person who is being accused of removing, damaging or destroying property of the potential civil or criminal consequences of such action.

3.5 Firearms: Responding officers should place all firearms into temporary custody. If the firearm cannot be seized:

(a) a judge can order the defendant to surrender the firearm, license to carry, and FID card; and

(b) a police chief can revoke the license or FID card.



3.6 Incident Reports: Domestic violence cases are subject to the same reporting procedures as any other crime scene.

3.7 Service of Orders: Service in hand unless otherwise directed by the court. Once an order has been issued by the court, officers should not accompany defendants back to the property for any reason without judicial authorization. The victim's safety should be considered in the timing of the service of any order.

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COMMONWEALTH OF MASSACHUSETTS

DOMESTIC VIOLENCE

STANDARDIZED LAW ENFORCEMENT GUIDELINES

1991

1.0 BACKGROUND. Among the most difficult and sensitive calls for police assistance are those involving domestic violence. When responding to a domestic disturbance, officers must be both alert and impartial, and must be concerned with the needs of victims where domestic violence is apparent or alleged. At the same time, officers must always anticipate the unexpected. What appears to be a dispute of a minor nature may quickly escalate into a conflict of dangerous proportions because of the potentially violent nature of such incidents. Domestic violence situations are often characterized by anger, frustration, intense emotion and a batterer's attempt to control household members. These feelings can easily be directed against the responding officers, who can suddenly become the focus and target of ensuing violence. It is not unusual for aggressive outbursts within families to lead to serious bodily injury or even death. For this reason, whenever possible, at least two police officers should be assigned to a domestic violence situation unless immediate intervention is necessary to prevent serious physical harm.

2.0 G.L. c. 209A ABUSE PREVENTION LAW (1991). Whenever any law officer has reason to believe that a family or household member has been abused or is in danger of being abused such officer shall use all reasonable means to prevent further abuse. The officer shall take, but not be limited to, the following action:

- a. remain on the scene where the abuse occurred or was (or is) in danger of occurring as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer for a reasonable period to prevent abuse;
- b. assist the abused person in obtaining medical treatment necessitated by an assault, which may include driving the victim to the emergency room of the nearest hospital, or arranging for appropriate transportation to a health care facility, notwithstanding any law to the contrary;
- c. assist the abused person and dependent children in



locating and getting to a safe place, including but not limited to a designated meeting place for a shelter or a family member's or friend's residence (or a similar place of safety). The officer shall consider the victim's preference in this regard and what is reasonable under all the circumstances;

- d. give abuse victims immediate and adequate notice of their rights by handing them and reading a form detailing their rights (see attached); where said person's native language is not English, the statement shall be then provided in said person's native language whenever possible;
- e. assist the abused person by activating the emergency judicial system (generally by contacting the state police, unless some other procedure has been established) when the court is closed for business;
- f. inform the victim that abuser will be eligible for bail and may be promptly released;
- g. arrest any person the officer witnesses or has probable cause to believe has violated a temporary or permanent vacate, restraining, or no-contract order or judgment.
- h. Where there are no vacate, restraining or no-contact orders or judgments in effect, arrest shall be the preferred response [Note: Officers are expected to use the same probable cause criteria which applies to any other crime.] whenever an officer witnesses or has probable cause to believe that a person:
  - (1) has committed a felony; or
  - (2) has committed an assault and battery in violation of G.L. c. 265, s. 13A; or
  - (3) has committed a misdemeanor involving abuse.

NOTE: This is a statutory exception to the longstanding rule which limited misdemeanor arrests to those committed in the officer's presence. Officers are now authorized to arrest for past misdemeanors not committed in their presence so long as the officers have probable cause to believe that a misdemeanor involving "abuse" occurred. Such misdemeanors include but are not limited to threats to commit crimes against the person or property of another (Chap. 265 sec. 2).

For the purposes of this law, "abuse" is defined as "the occurrence of one or more of the following acts between family or household members: (a) attempting to cause or causing physical harm; (b) placing another in fear of imminent physical harm; (c) causing another to



engage involuntarily in sexual relations by force, threat, or duress."

The safety of the victim and any involved children shall be paramount in any decision to arrest. Any officer arresting both parties is required by law to submit a detailed, written report in addition to an incident report, setting forth the grounds for dual arrest. [Dual arrests like the issuance of mutual restraining orders, trivialize the seriousness of domestic abuse and increase the danger to its victims.]

Officers investigating an incident of domestic violence shall not threaten, suggest, or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

Regardless of arrest, whenever an officer investigates an incidence of domestic violence, the officer shall immediately file a written incident report on the prescribed department form. The victim shall be provided a copy of the full incident report at not cost, upon request to the police department.

Family or household members are persons who:

- a. are or were married to one another;
- \* b. are or were residing together in the same household;
- c. are related by blood or are or were related by marriage;
- d. have a child in common regardless of whether they have ever been married or lived together; or
- \* e. are or have been in a substantial dating relationship as determined by a court. (See "Procedures" below regarding criteria courts use and officer's role in assisting court in making such determination.)

\* This includes same sex relationships.

C. 209A specifically provides that police shall make a warrantless arrest of a person whom the officer has probable cause to believe has committed a misdemeanor by violating a temporary or permanent vacate, restraining or no-contact order or judgment. (G.L. c. 276, s. 20.) Even if the victim is unwilling to bring a complaint against the alleged abuser, officers are expected to arrest where probable cause exists. [(Note: While GL. c. 276, s. 28 concerning arrests without a warrant for a violation of certain statutes, among which are listed c. 209 A, uses the work "may", this is superseded by the provisions of c.209 A which specify that officers "shall" make such a warrantless arrest.)]

Additionally, the trespass law - G.L. c. 266, s. 120 - has been

amended by including within its scope a violation of a "get-out" order issued pursuant to G.L. c. 208, s. 234B, or G.L. c. 209A.

An officer may arrest and detain a person charged with a misdemeanor, without having a warrant for such arrest in his possession, if the officer has actual knowledge that a warrant then in full force and effect for the arrest of such person has in fact issued. (G.L. c. 276, s. 28.)

According to Chapter 403 of the Acts of 1990: "No law officers shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a domestic violence incident for an arrest based on probable cause when such officer acted reasonable and in good faith and in compliance with this chapter and the statewide policy as established by the secretary of public safety".

It is strongly recommended that all reasonable measures be taken to ensure cooperation among law enforcement personnel and those social service agencies involved with domestic violence incidents.

### 3.0 PROCEDURES.

3.1 RESPONSE. The unique nature of domestic violence situations requires that an officer immediately proceed to the place of the dispute. Check with dispatcher about previous incidents and existing orders. If possible, a back-up officer should also be dispatched to the scene.

a. The initial contact by the responding officers must convey a professionally calm and helpful attitude.

1. The officer(s) shall state their reason for being present.

2. They must be considerate and attentive toward all parties and their problems regardless of the officers' own view or personal reactions toward the matter.

3. Upon entering, they shall prevent the physical movement of the parties as much as possible and control their access to any potential weapons.

b. Officers are authorized by c. 209A to transport victims of domestic violence to the emergency room of the nearest hospital. However, the preferred method of transportation is via ambulance, or if the victim is not seriously injured, in their own vehicle or that of a friend. Officers should receive approval from their supervisor prior to transporting victims of domestic abuse in a cruiser, except in an emergency.



- c. The responding officer(s) must take immediate control of the situation and should separate the parties to prevent any violent action. However, if there are two officers present at the scene, they should remain within view of each other to avoid any subsequent allegations of mistreatment.
- d. The use of alcohol and drugs, or a condition of mental illness, can aggravate a domestic violence situation, requiring far greater patience on the part of the responding officer(s).
- e. The provisions of G.L. c. 209A impose specific responsibilities upon the police as regards to domestic abuse situation. All officers are expected to be thoroughly familiar with the contents of this statute (as amended from time to time) and to act with discretion and competence in carrying out its provisions.

3.2 INVESTIGATION. Officers responding to domestic violence calls should conduct thorough investigations, including interviewing children, neighbors and other potential witnesses. Keep in mind that the same standards for probable cause apply to domestic violence offenses as for any other crimes.

- a. When investigating a report of domestic violence, officers should be thorough and observe the following guidelines

- 1. These specific guidelines shall govern any situation:

- (a) Officer(s) may enter private premises at the request of someone in lawful control of the premises, or to enforce the provisions of a protective court order or to take reasonable measures to prevent any further abuse under the authority of G.L. c. 209A.
    - (b) Officer(s) may enter private premises where there is probable cause to believe that a felony has been or is being committed or that there is imminent danger of violence which could result in death or serious physical injury or where a breach of the peace has been committed in the officer(s)' presence.
    - (c) Officer(s) must leave if both parties request that they do so unless there is probable cause to believe that a felony has been committed or that their continued presence



is necessary to prevent physical harm or to carry out the provisions of G.L. c. 209A.

(d) "Private premises" includes a house, an apartment, a condominium, a hotel room, a mobile home, or a house trailer.

2. In attempting to ascertain the facts in the dispute, the officer(s) should allow each party to present his or her story individually, avoiding any unnecessary interruptions or undue interference by either party. While keeping all parties and officers in view, separate the parties sufficiently to allow each to relate matters to an officer without being overheard by the other party.
3. To deal with the situation, the officer(s) must ask pertinent questions, and certain fundamentals must be followed:
  - a. Obtain information regarding identities and relationship. Also obtain a phone number where victim can be reached. If victim wishes to leave her residence, obtain a phone number where she can be reached. Officers should be aware that if a victim goes to a shelter (due to confidentiality requirements) a message must be left for victim to return calls.
  - b. Obtain information about firearms. If the officer determines that the weapon cannot be seized:
    1. the judge can order defendant to surrender guns and FID card; and
    2. the chief can revoke for felony convictions, drug use, possession or sale; and mental illness.
  - c. Unless necessary, avoid emphasis or in depth questioning on personal matters if there is an indication that the person would rather not discuss them more fully.
  - d. Ascertain if there is a prior history of such disputes and whether there are any vacate, restraining, no-contact or other protective orders currently in effect.
  - e. Determine, when appropriate, who has lawful custody of any minors involved and whether court approved visitation rights are being transgressed.
  - f. As a standard precaution, police should check for outstanding arrest warrants on persons encountered during a domestic dispute. Since of-

ficial court orders and other court papers are the best source for much of this information, police should ask the parties to produce copies of court orders or other court papers to verify their claims; in addition, the police records bureau may be checked, or appropriate courts, social service agencies or attorneys contacted.

g. Gather information, where applicable, which will assist the district, probate or Boston municipal courts in determining whether a "substantive dating relationship" exist. This is especially helpful if the officer anticipates activating the Emergency Judicial System. Chapter 209A specifies that such courts will take into consideration the following factors:

- \* the length of time of the relationship;
- \* the type of relationship;
- \* the frequency of interaction between the parties; and
- \* if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

h. Provide the addresses and telephone numbers of available crisis center or emergency shelters and where appropriate, advise any victims or witnesses of the Victim-Witness Assistance Program administered by the local District Attorney's Office.

### 3.3

**CHILDREN.** Where children are present at a domestic dispute, their welfare and safety must be a major consideration. Any evidence of neglect or emotional, physical or sexual abuse of children under eighteen shall be carefully noted. Whenever a police officer, in his professional capacity, has reasonable cause to believe that a child under eighteen is suffering serious physical or emotional injury resulting from abuse, including sexual abuse, or from neglect, including malnutrition, or if a child is determined to be physically dependent upon an addictive drug at birth, the officer shall make a full report to his superior such that an oral and written report may be made to the Department of Social Services as required by G.L. chapter 119, section 51A. If an officer believes that a child under eighteen has died because of neglect, abuse or drug addiction, or is present in a household in which the officer observes the presence of drugs or evidence of drug use, he shall make a full report to his superior in addition to the report to the Department of Social Services in accordance with that same statute.



- a. Officers should be aware that in serious cases of child neglect or abuse "any person" may apply to an appropriate juvenile court to have custody of a child under eighteen taken away from the parents or other neglectful or abusing custodian and have custody transferred, on an emergency basis, to the Department of Social Services or a licensed child care agency or individual. See Chapter 119, section 24.

- 3.4 **PROPERTY.** The relationship of the parties and their property interests complicate domestic violence situations. When a party to a domestic dispute is accused of removing or attempting to remove property from the dwelling or is accused of damaging or destroying property, he or she should be warned of the potential civil or criminal consequences of his or her conduct, and both parties should be advised to seek legal counsel. A vacate order issued pursuant to c. 209A include the following requirement:

The defendant shall not damage any of the plaintiff's belongings or those of another occupant and shall not shut off any utilities or mail delivery to the plaintiff.

- 3.5 **FIREARMS.** When a firearm or other weapon is present at the scene of a domestic violence situation or the responding officer(s) are informed that a firearm or weapon has been or may be involved in the dispute, the officer(s) shall:

1. request that the firearm or weapon be placed in their custody temporarily;
2. search for and take custody of the firearm or weapon if one of the parties requests that they do so;
3. search for and take temporary custody of the firearm or weapon to alleviate the threat of serious violence that it poses; and
4. determine whether a firearm is lawfully possessed before returning the same.

- 3.6 **INCIDENT REPORTS.** The reporting procedures of any other crime scene should be applied to domestic violence incidents. Prosecution and subsequent legal action can be greatly helped by documentation and description of physical injuries, photographs of the injuries, and/or noting the presence of children in household, and other information specified under 3.2.

- 3.7 **SERVICE OF ORDERS.** Service of orders shall be in hand unless otherwise ordered by the court. 209 A Sec. 7 requires that "the law enforcement agency shall



promptly make its return of service to the court".

- \* Without judicial authorization, officers should not accompany defendants to the property for any reason.

NOTE: The victim's safety should be considered in the timing of the service of the orders.

**ABUSED PERSON'S NOTICE OF RIGHTS**  
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**Directions to Police Officer:**

Give a victim of domestic violence immediate and adequate notice of his or her rights. The notice shall consist of handing said person a copy of the statement which follows below and reading the same to the victim. Where the victim's native language is not English, the statement shall be then provided in the victim's native language whenever possible.

You have the right to appear at the Superior, Probate and family District or Boston Municipal Court, if you reside within the appropriate jurisdiction, and file a complaint requesting any of the following applicable orders: (a) an order restraining your attacker from abusing you; (b) an order directing you attacker to leave your household, building or workplace; (c) an order awarding you custody of a minor child; (d) an order direction your attacker to pay support for you or any minor child in your custody, if the attacker has a legal obligation of support; and (e) an order directing your attacker to pay you for losses suffered as a result of abuse, including medical and moving expenses, loss of earnings or support, costs for restoring utilities and replacing locks, reasonable attorney's fees and other out-of-pocket losses for injuries and property damage sustained.

For an emergency on weekends, holidays, or week nights the po-

lice will refer you to a justice of the superior, probate and family, district, or Boston municipal court departments.

You have the right to go to the appropriate district court or the Boston municipal court and seek a criminal complaint for threats, assault and battery, assault with a deadly weapon, assault with intent to kill or other related offenses.

If you are in need of medical treatment, you have the right to request that an officer present drive you to the nearest hospital or otherwise assist you in obtaining medical treatment.

If you believe that police protection is needed for your physical safety, you have the right to request that the officer present remain at the scene until you and your children can leave or until your safety is otherwise ensured. You may also request that the officer assist you in locating and taking you to a safe place, including but not limited to a designated meeting place for a shelter of a family member's or a friend's residence, or a similar place of safety.

You may request a copy of the police incident report at no cost from the police department.





# **The Emergency Judicial Response System**





# **The Judicial Response System**

## **Year Nine Report**

July 3, 1992 - July 1, 1993

Administrative Office of the Trial Court

October 1993

The Massachusetts Trial Court operates the Judicial Response System, the state-wide emergency program, to assist local police departments, the Massachusetts State Police, hospitals, sheriffs and members of the public in resolving emergency legal situations when court is closed. The Trial Court is indebted to the Massachusetts State Police for their continued excellence in acting as dispatch agents for the activation of the Judicial Response System.

The Judicial Response System was formalized on July 13, 1984 and as of July 1, 1993 Trial Court Justices have responded to 44,469 calls. Prior to this, individual response systems operated in the Boston Juvenile Court, Probate & Family and District Court Departments.

#### Number of Calls Received

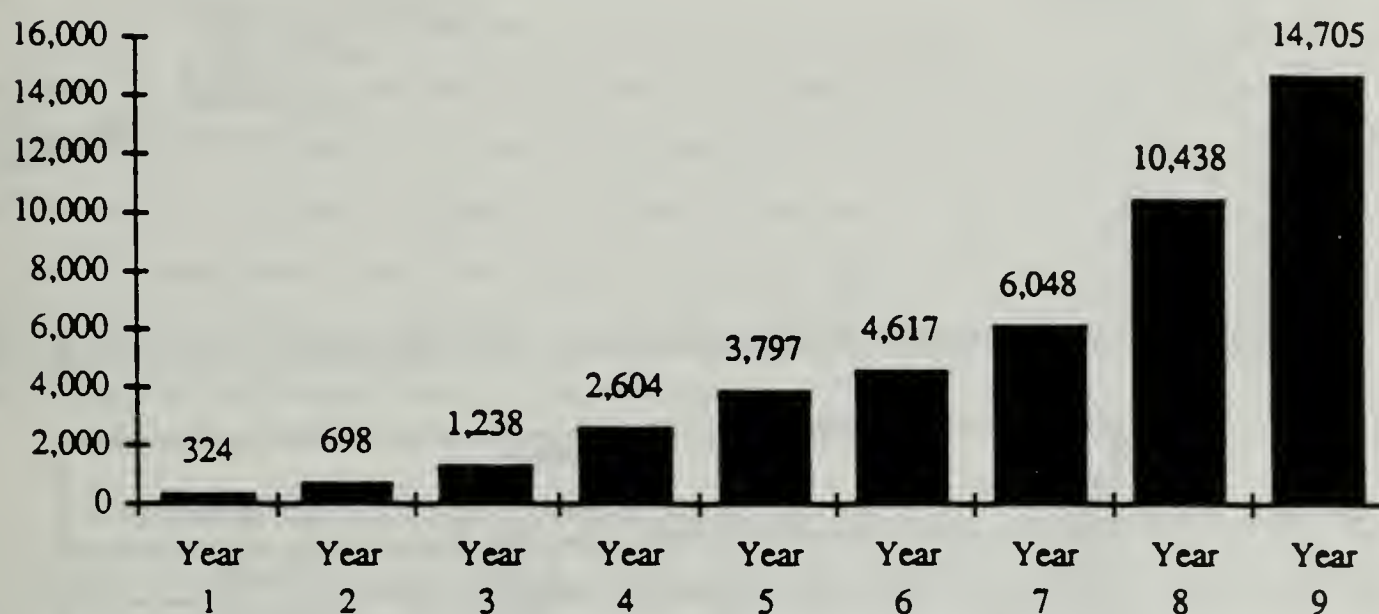
Year 1	(7/13/84 - 6/28/85)	324
Year 2	(6/28/85 - 6/27/86)	698
Year 3	(6/27/86 - 7/10/87)	1,238
Year 4	(7/10/87 - 7/08/88)	2,604
Year 5	(7/08/88 - 7/07/89)	3,797
Year 6	(7/07/89 - 7/06/90)	4,617
Year 7	(7/06/90 - 7/05/91)	6,048
Year 8	(7/05/91 - 7/03/92)	10,438
Year 9	(7/03/92 - 7/01/93)	14,705
Total		44,469

Justices assigned for duty have been designated by the Chief Justice for Administration and Management, as Associate Justices of all seven court departments. Acting as an emergency response justice, a judge is designated to perform the duties of a Superior, Land, Probate & Family, District, Housing, Juvenile and Boston Municipal Court justice.

The Report for Year Nine reports on the activity of the Judicial Response System from July 3, 1992 through July 1, 1993 and contains information recorded on log sheets provided by each justice who served in one of the eight JRS regions.

During Year Nine, Trial Court justices responded to a total of 14,705 calls which represents a 40.9% increase since Year Eight and a 143% increase since Year Seven. On average, the system received a call every 27.6 minutes, including holidays and weekends. The following chart shows the increase in calls by year, since the system was formalized in July, 1984:

**Yearly Totals of Calls Received  
by the  
Judicial Response System**



The state is broken down into eight regions with a justice serving in each region for a one week period.<sup>1</sup> All Trial Court justices participate in the system and serve on average once every 7 months. The frequency of service varies from region to region because the number of justices residing in each region varies. Justices of the Supreme Judicial Court and the Appeals Court are available to answer questions of an appellate nature should emergency judges need their assistance. Five State Police barracks act as

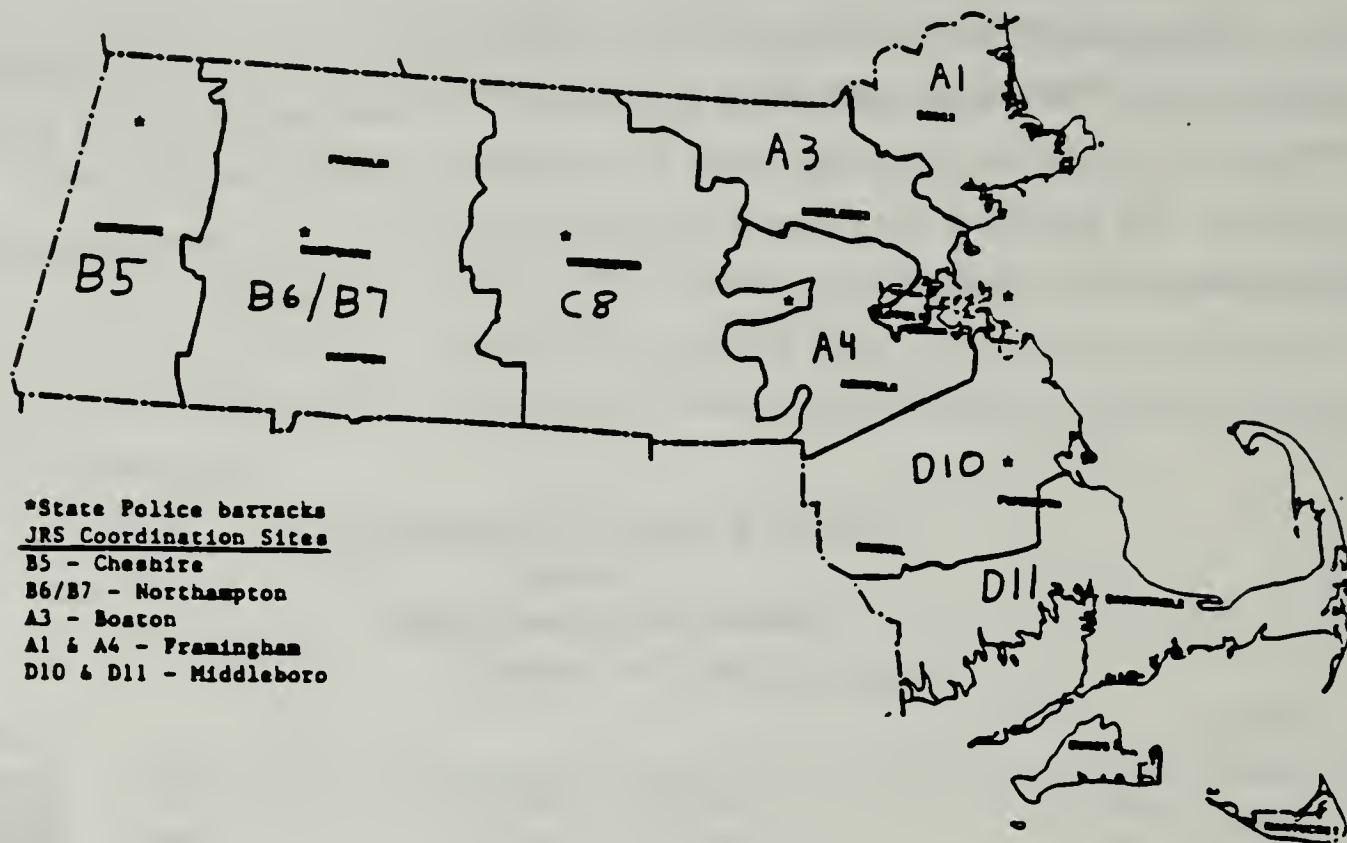
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<sup>1</sup> Justices in Region B5 (Berkshire County) serve for a one month period.



the dispatch agents for the system without whom, the Judicial Response System could not operate.

### Judicial Response System - Regional Breakdown



The following chart is a breakdown of calls received during Year Nine by Region:

Region	Year Nine Calls	% of Total
A1	2,129	14.5%
A3	2,461	16.7%
A4	1,482	10.1%
B5	267	1.8%
B6/B7	2,070	14.1%
C8	2,455	16.7%
D10	1,776	12.1%
D11	2,065	14.0%
State-Wide Totals	14,705	100.0%

Calls in Region A3 (Middlesex County/Suffolk County Area) led the state with 2,461 recorded calls and Region C8 (Worcester County Area) came in a close second with 2,455 calls recorded.

### Case Type Summary for Last Four Years

Case Type	Year 6	% of Total	Year 7	% of Total	Year 8	% of Total	Year 9	% of Total
c. 209A	4,222	91.4%	5,694	94.1%	10,093	96.7%	14,089	95.8%
Bail	19	0.4%	20	0.3%	17	0.2%	267	1.8%
Search Warrant	72	1.6%	69	1.1%	71	0.7%	82	0.6%
Emergency medical	45	1.0%	57	0.9%	38	0.4%	51	0.3%
c. 123 mental health related	140	3.0%	66	1.1%	68	0.7%	48	0.3%
Advice/Question	***	n/a	***	n/a	25	0.2%	44	0.3%
Custody/Visitation	5	0.1%	8	0.1%	33	0.3%	40	0.3%
Other	37	0.8%	65	1.1%	47	0.5%	28	0.2%
Arrest Warrant/Arraignment	22	0.5%	12	0.2%	17	0.2%	34	0.2%
Juv/CHINS	27	0.6%	43	0.7%	18	0.2%	13	0.1%
c. 119 §51c custody of injured child	27	0.6%	12	0.2%	9	0.1%	6	0.0%
c. 265§ 26a Kidnapping	1	0.0%	2	0.0%	2	0.0%	3	0.0%
Year Nine Totals:	4,617		6,048		10,438		14,705	

The largest type of request continues to be for assistance with domestic abuse complaints. Abuse prevention legislation is contained in chapter 209A of the Massachusetts General Laws. Justices recorded 14,089 calls during Year Nine - 95.8% percent of all emergency response requests for the year. This is an increase of 3,996 calls for c. 209A assistance over Year Eight which represents a 40 % increase in this category. However, Year Nine marks the first time that c. 209A requests did not increase as a percentage of total calls from the previous year.

The second highest category of request was a request for bail which accounted for 267 calls - 1.8 % of the total. It is estimated that the majority of these requests are due to a violation of a c. 209A restraining order.

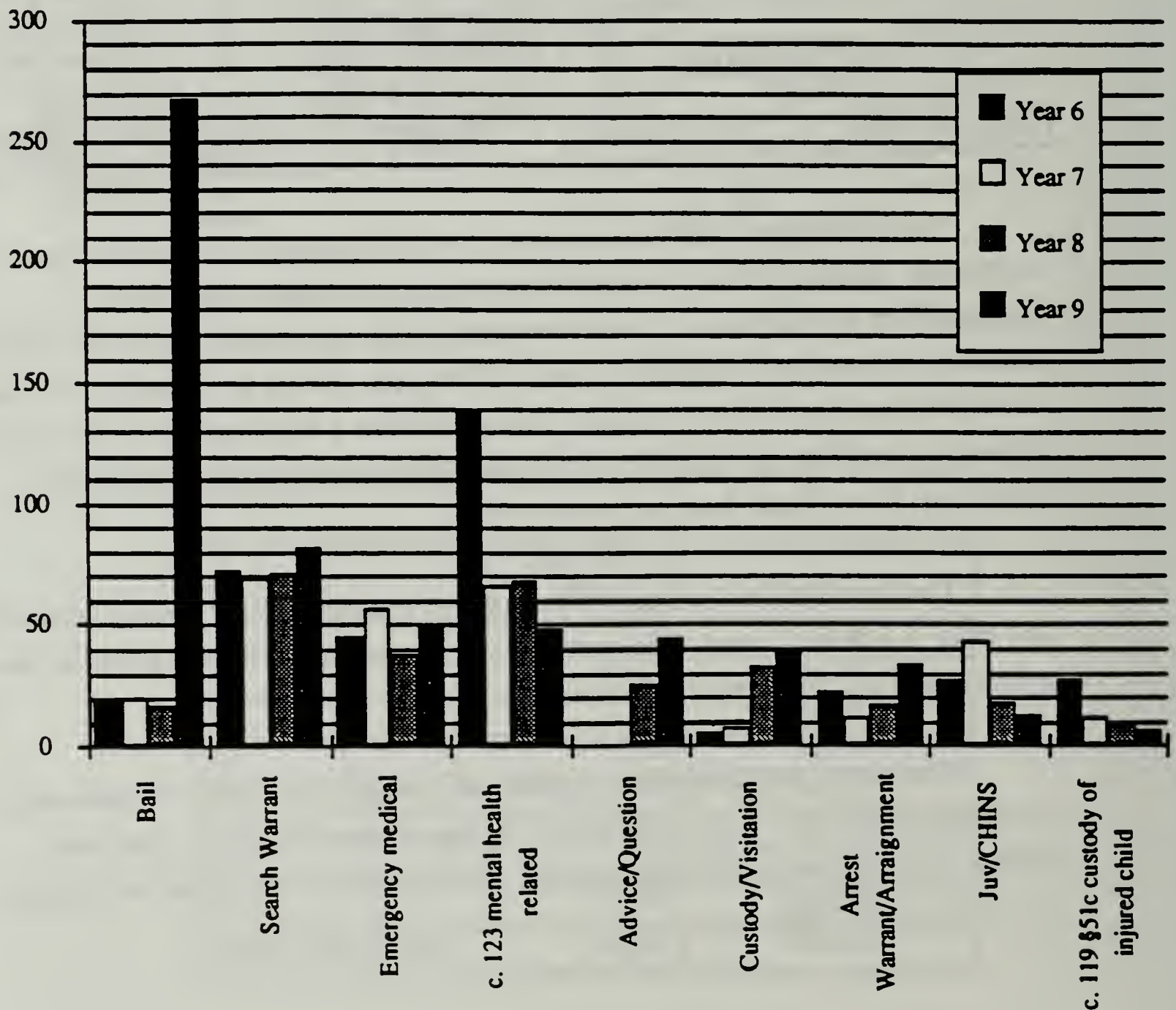
The third highest category of request was a request for a search warrant which accounted for 82 calls - 0.6% of the total. The State Police and District Attorneys' Offices made the majority of these requests. This category has remained fairly stable over the last four years.

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\*\*\* The category "Advice/Questions" was grouped into "Other" in Year 6 & Year 7

The chart below displays other significant categories of calls over the last four years. Judges were called to respond to 51 emergency medical calls in Year Nine which represents a 34 % increase over Year Eight. It is estimated that one third of these calls necessitated a judge's presence at a hospital to conduct a hearing, often to ascertain whether or not to authorize treatment for an incapacitated or minor patient. The Juvenile/CHINS category and the mental health /alcohol & substance abuser (c. 123) category decreased in Year Nine.

### Non - 209A Calls





Judges are also called by hospital administrators to rule on the custody of children under c.119 §51C which authorizes a judge to order a physician to hold a child in the hospital pending a hearing where a child has been suspected of being abused. In Year Nine, judges responded to a total of six c.119 §51C. This type of call has decreased steadily over the last four years.

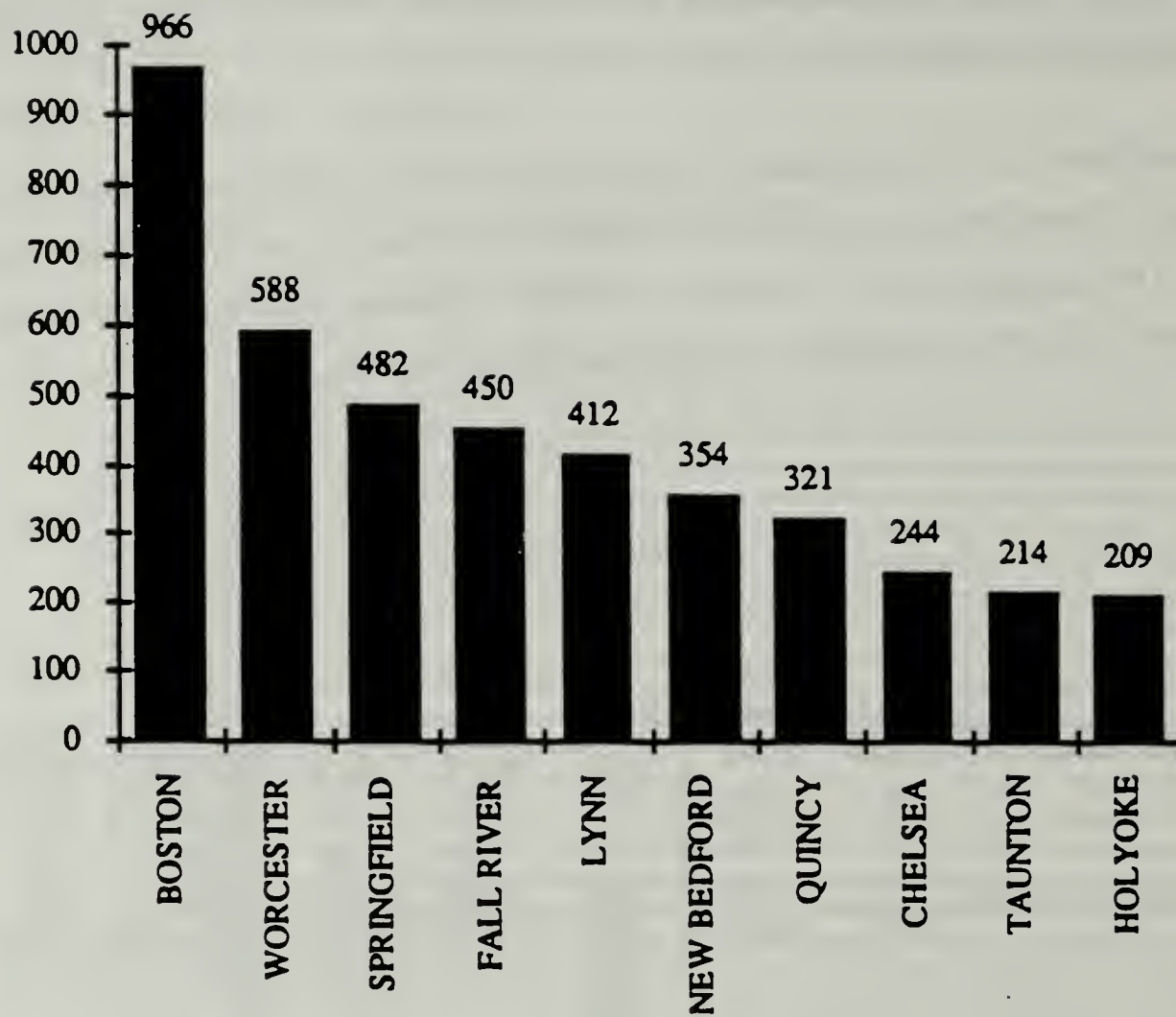
In addition, the Advice/Question category received a significant number of calls (44), primarily from local police departments, and were either to ask for advise or pose questions to the judges on call. Educational efforts are needed to inform local police that these types of calls are inappropriate for the emergency system.

### Requestors

Requestors	Year 6	% of Total	Year 7	% of Total	Year 8	% of Total	Year 9	% of Total
Local Police Department	4,336	93.9%	5,802	94.1%	10,204	97.8%	14,326	97.4%
State Police	66	1.4%	72	1.2%	96	0.9%	102	0.7%
Hospitals	97	2.1%	70	1.1%	49	0.5%	54	0.4%
Other	118	2.6%	222	3.6%	89	0.9%	223	1.5%
Totals	4,617	100.0%	6,166	100.0%	10,438	100.0%	14,705	100.0%

Local police accounted for 97.4 (14,326) of all requests recorded during Year Nine. This is a numerical increase of 4,122 calls - 40% increase over Year Eight. Of the 351 cities and towns in the Commonwealth, 322 used the Judicial Response System at least once during Year Nine. Appendix A lists the number of calls received from each local police department. The graph on the next page displays the "top ten" towns for Year Nine.

## "Top Ten Towns" Year Nine



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**Note:** Statistics contained in the Year Nine Report were compiled from log sheets provided by justices who participated in the system. It should be noted that information provided on the log sheets varies in detail and is subject to interpretation for the purposes of compiling statistics.



ABINGTON	23	DARTMOUTH	82	HULL	64	NORFOLK	17	STERLING	14
ACTON	24	DEDHAM	3	HUNTINGDON	1	NORTH ADAMS	40	STOCKBRIDGE	3
ACUSHNET	21	DEERFIELD	13	IPSWICH	24	NORTHAMPTON	101	STONEHAM	32
ADAMS	14	DENNIS	19	KINGSTON	16	NORTHBOROUGH	24	STOUGHTON	60
AGAWAM	50	DIGHTON	6	LAKEVILLE	14	NORTHBRIDGE	54	STOW	3
ALFORD	0	DOUGLAS	22	LANCASTER	10	NORTHFIELD	7	STURBRIDGE	23
AMESBURY	39	DOVER	0	LANESBOROUGH	3	NORTON	44	SUDBURY	20
AMHERST	73	DRACUT	13	LAWRENCE	117	NORWELL	31	SUNDERLAND	12
ANDOVER	22	DUDLEY	24	LEE	19	NORWOOD	3	SUTTON	20
ARLINGTON	71	DUNSTABLE	8	LEICESTER	30	OAK BLUFFS	29	SWAMPSCOTT	27
ASHBURNHAM	4	DUXBURY	11	LENOX	3	OAKHAM	7	SWANSEA	31
ASHBY	9	EAST BRIDGEWATER	31	LEOMINSTER	180	ORANGE	36	TAUNTON	214
ASHFIELD	5	EAST BROOKFIELD	3	LEVERETT	8	ORLEANS	13	TEMPLETON	45
ASHLAND	39	EAST LONGMEADOW	12	LEXINGTON	16	OTIS	1	TEWKSBURY	43
ATHOL	19	EASTHAM	11	LEYDEN	6	OXFORD	46	TISBURY	24
ATTLEBORO	164	EASTHAMPTON	39	LINCOLN	7	PALMER	70	TOLLAND	0
AUBURN	32	EASTON	43	LITTLETON	18	PAXTON	2	TOPSFIELD	5
AVON	2	EDGARTOWN	24	LONGMEADOW	7	PEABODY	130	TOWNSEND	5
AYER	56	EGREMONT	4	LOWELL	10	PELHAM	0	TRURO	5
BARNSTABLE	84	ERVING	1	LUDLOW	23	PEMBROKE	17	TYNGSBOROUGH	5
BARRE	19	ESSEX	6	LUNENBURG	25	PEPPERELL	52	TYRINGHAM	0
BECKET	1	EVERETT	58	LYNN	412	PERU	0	UPTON	10
BEDFORD	15	FAIRHAVEN	67	LYNNFIELD	11	PETERSHAM	0	UXBRIDGE	82
BELCHERTOWN	16	FALL RIVER	450	MALDEN	90	PHILLIPSTON	7	W. BOYLSTON	16
BELLINGHAM	31	FALMOUTH	97	MANCHESTER	4	PITTSFIELD	111	W. BRIDGEWATER	8
BELMONT	32	FITCHBURG	78	MANSFIELD	72	PLAINFIELD	10	W. BROOKFIELD	29
BERKELEY	6	FLORIDA	0	MARBLEHEAD	26	PLAINVILLE	14	W. NEWBURY	3
BERLIN	4	FOXBOROUGH	36	MARION	8	PLYMOUTH	124	W. SPRINGFIELD	70
BERNARDSTON	3	FRAMINGHAM	64	MARLBORO	76	PLYMPTON	12	W. STOCKBRIDGE	0
BEVERLY	33	FRANKLIN	42	MARSHFIELD	44	PRINCETON	4	W. TISBURY	11
BILLERICA	27	FREETOWN	12	MASHPEE	42	PROVINCETOWN	6	WAKEFIELD	35
BLACKSTONE	32	GARDNER	98	MATTAPOISETT	17	QUINCY	321	WALES	1
BLANDFORD	1	GAY HEAD	0	MAYNARD	23	RANDOLPH	41	WALPOLE	35
BOLTON	5	GEORGETOWN	9	MEDFIELD	2	RAYNHAM	33	WALTHAM	94
BOSTON	966	GILL	1	MEDFORD	167	READING	39	WARE	62
BOURNE	93	GLOUCESTER	141	MEDWAY	22	REHOBOTH	8	WAREHAM	67
BOXBOROUGH	14	GOSHEN	1	MELROSE	25	REVERE	84	WARREN	33
BOXFORD	44	GOSNOLD	0	MENDON	6	RICHMOND	0	WARWICK	2
BOYLSTON	3	GRAFTON	23	MERRIMAC	4	ROCHESTER	6	WASHINGTON	0
BRAINTREE	25	GRANBY	19	METHUEN	104	ROCKLAND	79	WATERTOWN	51
BREWSTER	28	GRANVILLE	1	MIDDLEBOROUGH	66	ROCKPORT	16	WAYLAND	9
BRIDGEWATER	45	GREENFIELD	177	MIDDLEFIELD	1	ROWE	0	WEBSTER	85
BRIMFIELD	4	GROTON	8	MIDDLETON	14	ROWLEY	7	WELLESLEY	2
BROCKTON	165	GROVELAND	7	MILFORD	83	ROYALSTON	0	WELLFLEET	5
BROOKFIELD	43	GT. BARRINGTON	5	MILLBURY	46	RUSSELL	7	WENDELL	0
BROOKLINE	91	HADLEY	5	MILLIS	11	RUTLAND	14	WENHAM	4
BUCKLAND	9	HALIFAX	15	MILLVILLE	8	S. HADLEY	35	WESTBOROUGH	32
BURLINGTON	58	HAMILTON	7	MIOTON	60	SALEM	102	WESTFIELD	73
CAMBRIDGE	130	HAMPDEN	9	MONROE	0	SALISBURY	47	WESTPORT	43
CANTON	31	HANCOCK	1	MONSON	35	SANDISFIELD	0	WESTHAMPTON	0
CARLISLE	2	HANOVER	20	MONTAGUE	42	SANDWICH	45	WESTMINSTER	14
CARVER	19	HANSON	12	MONTEREY	0	SAUGUS	48	WESTON	2
CHARLEMONT	4	HARDWICK	13	MONTGOMERY	0	SAVOY	0	WESTPORT	25
CHARLTON	25	HARVARD	7	MOUNT WASHINGTON	0	SCITUATE	33	WESTWOOD	1
CHATHAM	27	HARWICH	32	N. ANDOVER	51	SEEKONK	12	WEYMOUTH	126
CHELMSFORD	20	HATFIELD	5	N. ATTLEBORO	117	SHARON	22	WHATELY	0
CHELSEA	244	HAVERHILL	123	N. BROOKFIELD	31	SHEPPIED	8	WHITMAN	78
CHESHIRE	5	HAWLEY	0	N. READING	15	SHELBURNE	21	WILBRAHAM	15
CHESTER	0	HEATH	2	NAHANT	7	SHERBORN	1	WILLIAMSBURG	4
CHESTERFIELD	1	HINGHAM	36	NANTUCKET	37	SHIRLEY	19	WILLIAMSTOWN	3
CHICOPPEE	187	HINSDALE	3	NATICK	47	SHREWSBURY	62	WILMINGTON	23
CHILMARK	3	HOLBROOK	31	NEEDHAM	12	SHUTESBURY	2	WINCHENDON	31
CLARKSBURG	2	HOLDEN	16	NEW ASHFORD	0	SOMERSET	34	WINCHESTER	30
CLINTON	44	HOLLAND	8	NEW BEDFORD	354	SOMERVILLE	140	WINDSOR	2
COHASSET	14	HOLLISTON	11	NEW BRAINTREE	0	SOUTHAMPTON	13	WINTHROP	90
COLRAIN	0	HOLYOKE	209	NEW MARLBOROUGH	1	SOUTHBOROUGH	7	WOBURN	71
CONCORD	21	HOPEDALE	12	NEW SALEM	1	SOUTHBRIDGE	46	WORCESTER	588
CONWAY	2	HOPKINTON	15	NEWBURY	7	SOUTHWICK	19	WORTHINGTON	0
CUMMINGTON	3	HUBBARDSTON	7	NEWBURYPORT	30	SPENCER	70	WRENTHAM	18
DALTON	18	HUDSON	63	NEWTON	19	SPRINGFIELD	482	YARMOUTH	81
DANVERS	55								





# **Injury Documentation**





## NORWOOD POLICE DEPARTMENT

The office of the District Attorney for Norfolk County has announced that it is committed to following through on prosecutions for domestic violence even in situations where the victim refuses to testify or otherwise cooperate. To prosecute successfully, the assistant district attorneys trying the cases need our cooperation in the form of improved reporting of the circumstances involved in each arrest. To ensure that we secure all information necessary we have been given an investigative checklist which we in turn modified for use by the Norwood Police Department.

### CHECKLISTS

The reasons for which a person elects not to cooperate with a prosecution are as many and varied as the reasons why a victim will stay in an abusive situation. Ensuring that prosecutions will go forward, even without the victim takes a lot of the pressure off of the victim. What it also does though, is make the officer's report the star witness. For this reason we will be using the checklists to aid in evidence gathering. This should ensure that essential information is obtained at the time of the taking of the report and re-interviewing will not be necessary. The checklist should be used when there is an arrest made, warrant sought, or complaint application filed. A supply of checklists will be placed in each cruiser.

### PHOTOGRAPHS

We also have a donated Polaroid camera in the sergeant's cruiser. When visible injuries are present photographs are to be taken for evidence. A full body shot showing the injured area and a close up of the injury should be taken.

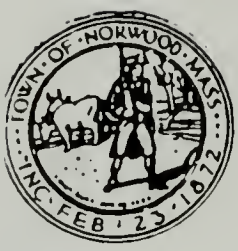
### OBSERVATIONS & STATEMENTS

Because there is a good chance that you and your report will be of major importance to the prosecution it is imperative that your report accurately describes the scene of the incident and includes statements made by all parties involved.

It is important to include in your report the observations you made when you arrived, including: if the altercation was still in progress what you heard upon approach, what you had to do to quell the disturbance, what you saw (observations of the combatants' physical appearances: sweating, clothing torn or disheveled; excited or withdrawn or withdrawn behavior). Mention in the report the physical appearance of the scene if it indicates a physical altercation had just occurred. Note the smashed ashtray or broken or overturned furniture.

A victim's statement can be used in court even when the victim fails to cooperate when the prosecution can show that the police received the statement as an excited utterance, thus serving as an exception to the hearsay rule. This can be aided by showing the chaos at the scene, (as shown above) and the accurate recording of the victim's statements. The statement will be admitted into evidence when we can show: That it followed a traumatic event and it was made under the stress or sway of that event. Describe the victim's demeanor when making the statement, (did it show excitement, fear, did the words pour out rapidly and loud?). Have the victim describe what led up to the attack. Key sentences should be taken verbatim and placed in quotation marks in the report. Spontaneous statements can be made in response to questions. It may prove worthwhile to copy the phone recording of the victim's call for help.

Recording the statements and showing that the combatants and the scene were still in disarray solidify the prosecutions contention that the statements should be admitted as excited utterances. While gathering the evidence, remain cognizant of the possibility that the victim may change her mind later and that the District Attorney's office will be prosecuting with or without the victim's cooperation. What you do at the scene and how well you report it may very well be the focus of a subsequent trial. This strategy has proven effective in San Diego, CA where prosecutions have progressed in 70% of cases where the victim refuses to cooperate. A conviction rate of 90% has been obtained in those cases.



## NORWOOD POLICE DEPARTMENT

### DOMESTIC VIOLENCE INVESTIGATION CHECKLIST

#### 1. VICTIM Name:

- \_\_\_\_\_ Described the victim's location upon arrival.
- \_\_\_\_\_ Administered 1st Aid to the victim and noted if medical treatment sought.
- \_\_\_\_\_ Noted time dispatched, arrived, and when victim spoke.
- \_\_\_\_\_ Recorded any spontaneous statements made by the victim.
- \_\_\_\_\_ Described the victim's emotional condition.
- \_\_\_\_\_ Described the victim's physical condition, including size in relation to attacker.
- \_\_\_\_\_ Described the victim's injuries in detail, (Size, Location, and Coloration).
- \_\_\_\_\_ Noted victim's relationship with suspect.
- \_\_\_\_\_ Recorded history of abuse and court orders.
- \_\_\_\_\_ Gave victim notice of rights (209A card).
- \_\_\_\_\_ Recorded temporary address/phone of victim.
- \_\_\_\_\_ Informed victim suspect may soon be bailed.

#### 2. Witnesses

- \_\_\_\_\_ Interviewed the reporting party.
- \_\_\_\_\_ Identified all witnesses and interviewed them separately.
- \_\_\_\_\_ Recorded all witnesses addresses and phone numbers.
- \_\_\_\_\_ Listed names and ages of all children present.
- \_\_\_\_\_ Interviewed the children.
- \_\_\_\_\_ Recorded names of emergency personnel.
- \_\_\_\_\_ Identified treating physician.

#### 3. SUSPECT Name:

- \_\_\_\_\_ Described the suspect's location upon arrival.
- \_\_\_\_\_ Administered 1st Aid to the suspect and noted if medical treatment sought.
- \_\_\_\_\_ Recorded any spontaneous statements made by the suspect.
- \_\_\_\_\_ Described the suspect's emotional condition.
- \_\_\_\_\_ Described the suspect's physical condition.
- \_\_\_\_\_ Described the suspect's injuries in detail.
- \_\_\_\_\_ Documented evidence of use of alcohol or drugs by the suspect.
- \_\_\_\_\_ Following Miranda, asked suspect if he wanted to make a statement, knew of restraining order or understood order.

#### 4. Evidence

- \_\_\_\_\_ Photographed the crime scene.
- \_\_\_\_\_ Took "Full Body" shot of victim.
- \_\_\_\_\_ PHOTOGRAPHED the Victim's Injuries.
- \_\_\_\_\_ Photographed the suspect's injuries.
- \_\_\_\_\_ Impounded or took into evidence all weapons used or items thrown.
- \_\_\_\_\_ Impounded weapons for safekeeping.
- \_\_\_\_\_ Attached related reports, photos and evidence tags.

Investigating Officer

Date

Commanding Officer

Date



# Domestic Violence Documentation

*Photographs improve prosecution success rates*

BY DAVID L. HINDS



*Before documenting specific injuries, take a full-body photograph of the victim to establish identity and the location of injuries.*

Statistics show that in the United States, a woman is battered by a husband or partner every 15 seconds. In a national survey, over half of the males who were violent toward female partners also abused their children. Police estimate that 40 to 60% of their calls are in some way related to domestic violence.

As the awareness and frequency of domestic violence incidents increases, so too has the need for a tool to assist in the effective documentation and reporting of these incidents. Fortunately, one of the most effective tools is also one that has been used by law enforcement for almost 50 years—

instant photography.

In March 1992, Polaroid Corporation received a request from the Norfolk County, MA, District Attorney's office to train 10 area police departments in the use of instant photography to record domestic violence incidents. The goal of the training was to provide law enforcement officers with a tool to increase the effectiveness of written

incident reports by providing a vehicle to communicate the severity of an incident in a way that words alone cannot.

## IMPROVING THE ODDS

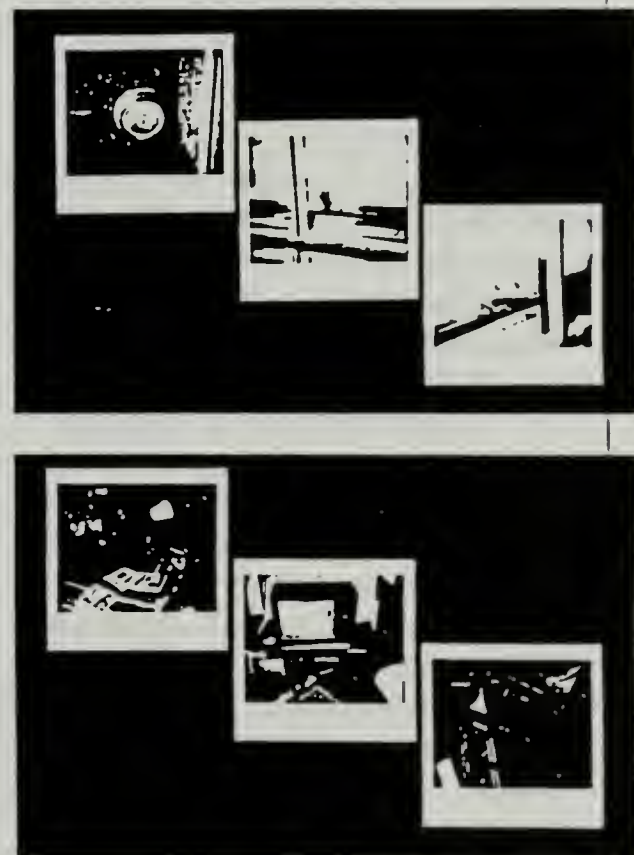
One of the most emotionally-charged situations to which police officers must respond is the domestic violence call. Detailed incident reporting, including photographs of the victim's injuries, can significantly improve the rate of successful prosecutions of offenders. The effective recording of a domestic violence incident upon arrival at the scene is critical to future court proceedings.

Sarah Buel, director of the Domestic Violence Unit of the Suffolk County District Attorney's office said, "If we can determine from the police report the victim's statements,

demeanor, injuries and history, then we as prosecutors can better protect the victim and hold the defendant accountable. This information is also extremely important to a judge when considering bail and making judgments about future actions by a defendant."

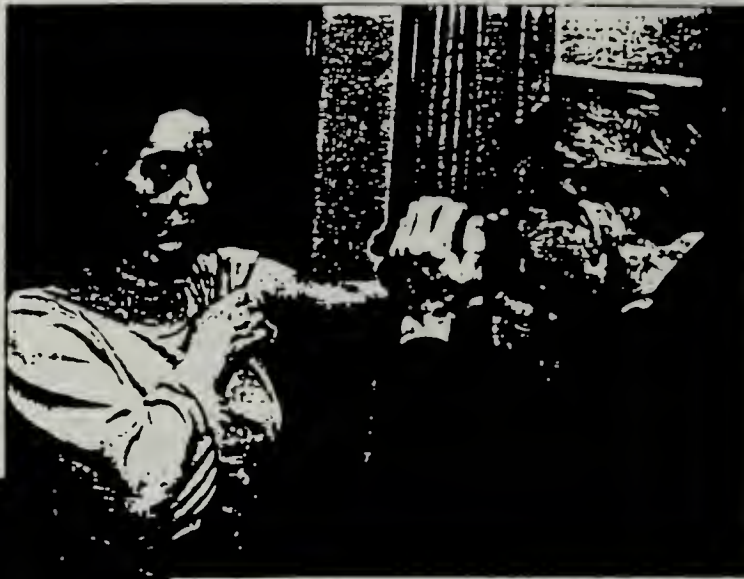
Photography can play a valuable role in bringing domestic violence cases to trial. Research indicates that many such victims attempt to drop charges against an abuser within 24 hours of filing a complaint. However, in many states, the existence of recorded evidence (photographs) of criminal

*Take photographs of the exterior and interior of the structure where the abuse occurred from multiple perspectives and varying distances.*





*Take mid-distance, close-up and one-to-one photos of specific injuries. To avoid excessive shadows, position the victim in front of a non-reflective surface to allow shadows to drop behind the subject.*



believed that it was the victim's responsibility to prosecute the suspect," William D. Delahunt, Norfolk County, MA, district attorney, said. "In Norfolk County, we are prosecuting suspects even if the victim decides not to participate, so we necessarily rely heavily on the police report, including photography, made by the first responding officers at the crime scene."

Once the scene is secured, how well a responding officer documents the incident will dramatically impact the success or failure of a subsequent trial.

"To prosecute successfully, the assistant district attorneys trying the cases need police cooperation in providing the very best reporting of the circumstances," Norwood, MA, Police Chief George DiBlasi said. The reporting system designed by the Norwood police includes three basic elements: a domestic violence checklist; the

recording of spontaneous utterances made at the scene or in subsequent interviews with the victim; and extensive photographic documentation of the incident scene and victim.

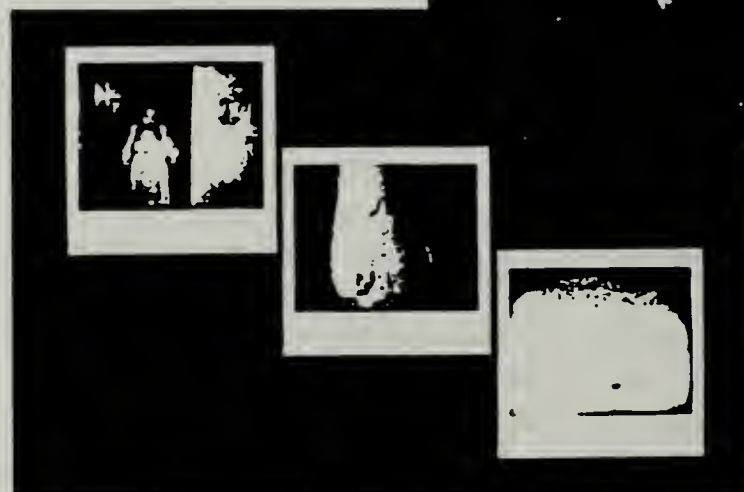
The checklist that each officer must complete provides pertinent information regarding the victim, the suspect, witnesses and other evidence. Because the checklist outlines all the details necessary to build a

case, there is no need for the officer to second guess whether they have obtained all the information they need. Specific information on the checklist is supplemented with instant photos.

"Anything the victim says about the crime, what we call 'spontaneous utterances,' are written down in quotation form whenever possible," DiBlasi said. "The officers then take a series of detailed photographs of the victim and the crime scene."

#### **MULTIPLE PERSPECTIVES,**

As a supplement to a written report, instant photographs provide substantial evidence of abuse. In order to ensure the effective documentation of the incident, the victim's injuries should be photographed from a mini-



*Use a copystand attachment to capture actual size images of injuries. Make certain to document scars and fading injuries which can prove a pattern of abuse.*

activity (assault) allows a law enforcement agency to continue the investigation and prosecution of the case without the victim's participation.

"We base our policy on the experience of the San Diego Police Department, where their prosecutors go forward in approximately 70% of cases where the victim cannot testify. They are able to secure convictions in about 90% of those cases. This underscores the importance of police investigation and the taking of photographs of the victim's injuries at the scene," Buel said.

In many states, such as Massachusetts and California, law and protocol dictate that responding officers address the victim's medical condition first. Officers then read aloud and provide to the victim a copy of the state's abuse law. In Massachusetts, if a suspect is present, police are obligated to make an arrest if the person has violated a vacate, no contact and/or refrain from abuse order issued by a judge. A suspect will also be arrested without such orders if the officer has reason to believe that a person has committed a felony or a misdemeanor involving abuse.

"The problem is that, historically, police and the criminal justice system



mum of three perspectives. First, a full-body photograph should be taken for identification of the victim and to establish the location of all visible injuries. Next, take close-up photos of each injury to capture detail. Also, record any evidence of old or fading injuries. Finally, take one-to-one (actual size) photos of small or fading injuries.

Be certain to document examples of fresh bruising, cuts and swelling. Check the upper and lower sections of the victim's arms for defensive injuries typical in instances where the victim tries to deflect blows. Also, look for old scars and the skin discoloration which occurs when bruises fade. These images may substantiate an allegation of a pattern of abuse over an extended period of time. In many cases, a victim's wounds will be hidden by clothing. In this situation, have a female officer or victim advocate available to take photos of these injuries in a private setting.

The bright overhead light sources commonly found in household settings can create sharp shadows on a person's face. Because these shadows can exaggerate or conceal injuries, photograph the victim using a diffused light source such as a shaded overhead lamp, table lamp or daylight. Also, position the victim a few feet in front of a non-reflective surface such as a painted wall. This will allow any shadows to drop behind the subject.

If the automatic flash causes excessive shadows, position the camera slightly to the left or right of the subject, lower the camera's flash setting and take another photograph. You may also position the camera slightly above the subject to diffuse the flash. However, to avoid distortion, don't point the camera up or down at the subject at an extreme angle.

If image detail is being obscured by excessive light, lower the camera's flash setting and move slightly away from the subject before taking another photograph. A good general rule to remember is: the closer the subject, the less light required for illumination of the subject.

### **THE CRIME SCENE**

It is also important to photograph

the environment in which the abuse occurred. The guidelines governing standard crime scene documentation should be applied to all domestic violence incidents, and you should work your way into the location as you would in any criminal investigation. Take photographs of the exterior of the structure where the incident occurred, again, from multiple perspectives and varying distances. If possible, record the address of the dwelling including the street name. Obtain images of any exterior evidence of damage resulting from the incident, particularly evidence of forced entry such as broken windows, doors or locks. Evidence of forced entry may help to prove the violation of a restraining order.

Record the room or rooms where the incident took place. Photograph broken or overturned furniture, damaged appliances and any structural damage. In assessing restitution amounts, such photographs may prove invaluable. Document any evidence of drug or alcohol use including paraphernalia and empty beverage containers.

Finally, record any evidence of the presence of weapons. Do not limit yourself to conventional weapons such as guns and knives. Because of the spontaneous nature of many domestic violence incidents, common household items including furniture, curtain rods and cords are often used as weapons. Photograph all evidence at the scene from several perspectives: first, from a wide angle to show the overall scene; second, document specific evidence in relation to the overall scene. Document evidence from a close-up position with and without a ruler or other object to indicate scale. Where appropriate, use a copystand to document small objects of evidence.

"We have to identify what is evidence; we must gather and preserve that evidence; and we have to present it in an appropriate fashion so it can be used in court," DiBlasi said. "A domestic violence checklist and instant photography are the key components of our success. Photographs capture the violence of the moment—and make an impact on the jury. They also refresh a

victim's mind when the incident is brought quite vivid six months later in court."

### **EQUIPMENT SELECTION**

Because of the charged atmosphere at the scene of a domestic violence incident, you must be familiar with the operation of the photography equipment and be capable of obtaining photographs without being overly intrusive. The presence of complex photography equipment can be very intimidating, and if the process of taking photographs becomes prolonged, the victim may become upset and withdraw permission to take photographs.

Norfolk County police officers were trained to document domestic violence incidents using the Polaroid Close-up Kit for Law Enforcement. The kit includes the Spectra instant camera system; close-up lens attachment; and one-to-one copystand. The Spectra camera features a sonar autofocus; built-in programmed flash; a flash override function and self-timer. To simplify its operation, the camera's control panel features an exposure control that enables the user to adjust the lightness or darkness of the photos with the movement of a single switch. The entire system is simple to operate, yet is versatile enough to meet most incident documentation needs.

Details of injuries are recorded using the close-up lens attachment that allows officers to photograph objects as close as 10 inches. Images of smaller wounds, such as cigarette burns and details of fading wounds and bruises, are captured using the copystand. To operate the copystand the user simply places the camera, lens pointed downward, into the stand, frames the injury to be documented and snaps the picture. The camera's flash and optics are designed to assure proper exposure and focus without adjustment or modification.

To assist police, Polaroid introduced High Definition GridFilm. When used with the Spectra system close-up lens attachment to photograph a subject, a series of vertical and horizontal lines appears over the image. Each square of the grid pattern measures one centimeter in each direction and can be used to accurately measure the size of a wound. To place individual



incidents in a context that visually communicates the severity of a situation, district attorney's offices are using Polaroid's OneStep Photographic copier to create "photographic storyboards" that illustrate the victim's injuries and the crime scene for presentation to a jury.

A simple, push button-operated system that resembles a conventional photocopier, the OneStep produces full-color or black-and-white photographic copies, enlargements and transparencies of the instant photographs taken at the scene. The OneStep produces sharp, continuous-tone color prints without a loss of image quality. These images are then used during trial proceedings to present, on a single sheet of film, the progression of injuries suffered by the victim over a period of time. The system also creates enlargements of regular instant photos to highlight specific details of an injury.

#### INSTANT ADVANTAGES

Instant photography offers several distinct advantages when used to document domestic violence incidents. First, instant photographs provide confirmation that the necessary images have been obtained. Also, because the results are immediate, officers take only the shots needed. Speed is another benefit. Instant photos of a victim's injuries, when presented with written documentation of the incident, can be useful in obtaining a restraining order against an abuser.

Instant cameras are easy to operate and require minimal training and photographic expertise to achieve satisfac-

tory results. Because of this simplicity, officers can obtain the necessary images of the victim with a minimum of intrusion. Instant cameras are versatile, and incorporate numerous features that make them appropriate for photographing victim injuries and the surroundings where the abuse occurred.

Finally, because instant photographs are tamperproof, and are destroyed by any attempts to alter them, they withstand tough scrutiny by judges and juries. "The technical quality of instant

film and cameras has allowed us to discern the coloring and detail of bruising and other injuries to a credible degree," Delahunt said.

"Also, batterers don't look like criminals, and consequently, juries hesitate to convict them. A photo can change their mind. That's why we encourage police officers to take photographs at the scene." L&O

*David L. Hinds is director of Strategic Planning for Polaroid Corporation's law enforcement and government sectors.*

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Federal Bureau of Investigation

Based on its experiences working with the Suffolk and Norfolk District Attorney's offices in Massachusetts, Polaroid has developed a domestic violence injury documentation training module as a part of its School of Law Enforcement Imaging seminar series. The module is designed to provide law enforcement officers, prosecutors and domestic violence victim advocates with hands-on training in the photographic documentation of bodily injuries and crime scenes. For information on how you can attend a domestic violence documentation seminar, call (800) 225-1618.



# **Legal Developments In Domestic Violence Law**



(a) Whoever willfully, maliciously, and repeatedly follows or harasses another person and who makes a threat with the intent to place that person in imminent fear of death or serious bodily injury shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for not more than five years or by a fine of not more than one thousand dollars, or imprisonment in the house of correction for not more than two and one-half years or both.

(b) Whoever commits the crime of stalking in violation of a temporary or permanent vacate, restraining, or no-contact order or judgment issued pursuant to sections eighteen, thirty-four B, or thirty-four C of chapter two hundred and eight; or section thirty-two of chapter two hundred and nine; or sections three, four, or five of chapter two hundred and nine A; or sections fifteen or twenty of chapter two hundred and nine C; or a temporary restraining order or preliminary or permanent injunction issued by the superior court, shall be punished by imprisonment in a jail or the state prison for not less than one year and not more than five years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of one year.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this subsection.

(c) Whoever, after having been convicted of the crime of stalking, commits a second or subsequent such crime shall be punished by imprisonment in a jail or the state prison for not less than two years and not more than ten years. No sentence imposed under the provisions of this subsection shall be less than a mandatory minimum term of imprisonment of two years.

A prosecution commenced hereunder shall not be placed on file or continued without a finding, and the sentence imposed upon a person convicted of violating any provision of this subsection shall not be reduced to less than the mandatory minimum term of imprisonment as established herein, nor shall said sentence of imprisonment imposed upon any person be suspended or reduced until such person shall have served said mandatory term of imprisonment.

A person convicted of violating any provision of this subsection shall not, until he shall have served the mandatory minimum term of imprisonment established herein, be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct under sections one hundred and twenty-nine, one hundred and twenty-nine C and one hundred and twenty-nine D of chapter one hundred and twenty-seven; provided, however, that the commissioner of correction may, on the recommendation of the warden, superintendent, or other person in charge of a correctional institution, grant to said offender a temporary release in the custody of an officer of such institution for the following purposes only: to attend the funeral of next of kin or spouse; to visit a critically ill close relative or spouse; or to obtain emergency medical services unavailable at said institution. The provisions of section eighty-seven of chapter two hundred and seventy-six relating to the power of the court to place certain offenders on probation shall not apply to any person seventeen years of age or over charged with a violation of this subsection. The provisions of section thirty-one of chapter two hundred and seventy-nine shall not apply to any person convicted of violating any provision of this section.

(d) For the purposes of this section, "harasses" means a knowing and willful pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms or annoys the person. Said conduct must be such as would cause a reasonable person to suffer substantial emotional distress.

Added by St.1992, c. 31.



## STALKING BILL

By: Robert J. Bender, Assistant District Attorney,  
Essex County District Attorney's Office

On Monday, May 18, 1992, Governor Weld signed Senate Bill 1493, St. 1992, c. 31, which creates two new crimes, "stalking" and stalking in violation of a court order, G.L. c. 265, §§43(a) and 43(b), respectively. There are enhanced penalties for second and subsequent convictions of stalking, added as §43(c). An emergency preamble was signed, which made these new crimes effective at 2:30 p.m. Monday, May 18, 1992.

### ELEMENTS

#### "STALKING:" c. 265, §43(a)

- (1) "whoever willfully, maliciously, and repeatedly"
- (2) "follows or harasses another person"
- (3) "and who makes a threat with the intent to place that person in imminent fear of death or serious bodily injury"

#### "STALKING IN VIOLATION OF A COURT ORDER:" c. 265, §43(b)

- (1) "whoever commits the crime of stalking"
- (2) "in violation of a temporary or permanent vacate, restraining, or non-contact order or judgment issued pursuant to" G.L. c. 208, §§18, 34B, or 34C, or G.L. c. 209, §32, or G.L. c. 209A, §§2, 4, or 5, or G.L. c. 209C, §§15 or 20, or a temporary restraining order or preliminary or permanent injunction issued by the superior court.

### ANALYSIS

The Legislature has recognized that some offenders have been committing serious misconduct which seemed to "borrow" elements of certain "traditional" crimes, but as a whole was not targetted by any crime. This new statute defines a new crime, "stalking," and spells out its elements with particular care to give proper notice of what misconduct falls within its scope. The new crime is not intended to replace but to complete the familiar list of offenses against persons which have been used to address such behavior. It is certain that in

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the past some offenders have committed acts best described as "stalking," but until now these offenders usually could be prosecuted only for misdemeanors. Now, if every element of the crime of stalking can be shown to have occurred since 2:30 p.m. on May 18, 1992, a felony can be prosecuted in appropriate cases.

## Jurisdiction and Penalties

"Stalking," G.L. c. 265, §43(a), is punishable by a fine or by 5 years imprisonment in state prison or by 2 1/2 years in the house of correction. Thus it falls within the concurrent jurisdiction of the District Court and the Superior Court. "Stalking in violation of a court order," G.L. c. 265, §43(b), also is punishable by 5 years imprisonment in state prison or by 2 1/2 years in the house of correction, but this crime carries a mandatory minimum sentence of one year, which may not be suspended or reduced by probation, parole, work release, or furlough. The statute uses the same language for the mandatory portion of the sentence as is used in G.L. c. 94C, §32H, concerning mandatory minimum sentences for certain drug offenses. This crime too falls within the concurrent jurisdiction of the District Court and the Superior Court.

## Second and Subsequent Offenses

Under G.L. c. 265, §43(c), if a prior conviction for "the crime of stalking" is proven, the authorized penalty doubles to 10 years imprisonment in state prison, with a house of corrections alternative. There is a 2 year mandatory minimum term. G.L. c. 218, §26, has not been amended to bring second and subsequent offenses within the jurisdiction of the District Court. Now it is a 10 year felony within the jurisdiction of the Superior Court only. Note that §43(c) is not as clear as it should be regarding what "counts" as a "prior conviction." It is certain that repeat violations of §43(a), which is defined specifically as "the crime of stalking," are to be treated as "second and subsequents" subject to §43(c)'s enhanced penalties. The crime of stalking in violation of a court order, as defined by §43(b), is an "aggravated" form of stalking, so that logically a previous conviction under §43(b) should make the repeat offender one who has "been convicted of the crime of stalking." It may be argued, however, that §43(c) applies by its very terms only to prior violations of §43(a).

## Definition of "Harasses"

As the elements show, stalking is either willful, malicious, and repeated "following" with proof of actual



threat, or willful, malicious, and repeated "harassment" with proof of actual threat. The new statute defines "harasses" in such a manner that if one can prove the statutory element of "harasses," one also will have proved "willfully, maliciously, and repeatedly." To prove "harasses," one must show "a knowing and willful pattern of conduct or series of acts over a period of time," which is the functional equivalent of "willfully" and "repeatedly." This choice of language implies that to establish "harasses," it is not enough to prove that the offender committed several distinct acts (which seriously alarm or annoy) at one time or in one criminal contact with the victim. It is necessary to prove distinct acts which occurred "over a period of time." Stalking is repeated harassment. Harassment is repeated if it occurs on more than one occasion; harassment is repeated even if the offender does not repeat the first pattern of conduct but changes to a different type of harassing conduct.

The second part of the definition of "harasses" requires that the misconduct "seriously alarms or annoys the person" and is "such as would cause a reasonable person to suffer substantial emotional distress." Thus the statute requires that the victim actually feel serious alarm or serious annoyance due to the offender's actions directed at that person, and that the offender's actions be "such as would cause" any reasonable person to suffer such "substantial emotional distress."

#### Evidence of a Threat

The third element of "stalking," that of "and who makes a threat with the intent to place that person in imminent fear of death or serious bodily injury," cannot be overlooked. An offender who repeatedly makes such threats does maliciously harass, but one does not commit the crime of stalking by following or harassing alone. There must be proof of an actual threat. The "threat" element of stalking is "narrower" than the familiar "threat to commit a crime" offense in G.L. c. 275, §3. The threat in stalking requires proof that the offender had the specific intent to place the victim "in imminent fear of death or serious bodily injury." It is not enough that the victim feel threatened or that the offender's acts or words "seriously alarm or annoy" the victim. Proof of stalking requires evidence of the offender's state of mind or intention. In practical terms, however, specific intent to place the victim in imminent fear may be inferred from the offender's acts or words as reported by the victim. It is not necessary to establish that "a reasonable person" would have



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been placed in fear by the threat, but if that is established, the inference that the offender intended to place the victim in fear is strong. In addition, specifying that the threat be made with the intent to cause the victim "imminent fear" should be read to mean that the offender intended that the victim be in fear immediately. This does not require that the threat be one of immediate harm. It is enough that the offender intend the victim to be immediately and/or continuously in fear of a harm which could occur at any time, without warning. The statute does not require that the threat be made "in person."

### Stalking by Following

Finally, the mere willful and repeated following of another is not "stalking." The offender must follow "maliciously," and also must make the requisite threat. The threat does not need to occur during the act of following, and once the threat is made, the "malice" of the act of following may be more evident. It would seem that any acts of malice during the following also establish the malicious intent.

### Stalking in Violation of a Court Order

Stalking in violation of G.L. c. 265, §43(a), is a lesser included offense, or necessary element of stalking in violation of a court order, under G.L. c. 265, §43(b). The "aggravated" form of stalking carries the additional element that the stalking occur in violation of the terms of a court order that the offender "vacate" the victim's home, or have "no contact," or "refrain from abuse." The court orders listed in the stalking statute are the same ones listed in G.L. c. 209A, §7, orders which will have been served on the offender pursuant to G.L. c. 209A, §7. Of course, violation of such court orders is itself a crime, created by G.L. c. 209A, §7, and punishable by a fine or by up to two and one half years in jail. Stalking in violation of a court order thus appears as an "aggravated" form of this misdemeanor too.

No court order is violated by acts which occur before such an order is issued, and it is not necessary to prove that the offender intended to violate the court order to prove this crime; it is only necessary to prove that the offender willingly, maliciously, and repeatedly did the acts which constitute stalking. By the act of stalking, one may commit an act of abuse ("placing another in fear of imminent serious physical harm") or otherwise violate a "no-contact" or vacate (and stay away) order. It does not appear necessary to prove that the offender had been served with the court order, but it



is prudent to show that the offender was served or otherwise knew about the court order because such evidence strengthens the inferences of malice and intent to place the victim in imminent fear, each an element of stalking. A prosecutor may argue that one who stalks may be guilty without knowledge of the court order on a strict liability basis. See Commonwealth v. Miller, 385 Mass. 521, 524-525 (1982) (statutory rape).

#### Acts of Stalking Committed Before May 18, 1992

It is important to realize that conduct which occurred before the time that stalking became a crime may be used only to put the offender's conduct after criminalization into context. See, e.g., Commonwealth v. Gordon, 407 Mass. 340, 351 (1990) (evidence of acts which occurred before issuance of restraining order may be admissible at trial for violation of that order). The offender must act repeatedly and make the requisite threat after the passage of the statute, regardless of his or her earlier conduct.

#### Form of Complaint or Indictment

Complaints or indictments should be drawn in the precise wording of the statute. If the acts alleged are covered by the mandatory minimum sentencing provisions of the statute, and the prosecutor wishes to ensure that these sentencing provisions apply, the complaint or indictment should be drawn in two parts, with the second page alleging, in the specific terms of the statute, the relevant aggravating factor (i.e., violation of a court order or previous conviction for stalking).

#### CONCLUSION

While the Stalking Bill may not be the solution to every case, it will prove to be an important protection or prevention only if it is implemented and not ignored. Do not hesitate to contact your District Attorney's office or the Attorney General's office (Jane Tewksbury, Chief of the Family and Community Crimes Bureau, or Diane Juliar, Director of Policy and Training, (617) 727-2200) with questions, suggestions, or comments based on your experiences with this new statute. Do not be deflected from prosecutions by challenges to the statute which will be addressed one by one in the trial courts, appellate courts, and perhaps in the Legislature.

## FREQUENTLY ASKED QUESTIONS ABOUT STALKING

The following is our current understanding of the application of the stalking law. Check with your local District Attorney's office, however, to determine whether a stalking charge is appropriate in a particular case.

1. What does the term "repeatedly" mean?

This term should be given its common sense meaning, that is, "more than once".

2. Are threats a necessary element of stalking, and what kinds of threats are sufficient to satisfy this element?

Yes, it is an element of the crime of stalking that a defendant made a threat with the intent of placing the victim in imminent fear of death or serious bodily injury. Unless a threat has been made, stalking cannot be charged.

A verbal threat or an action which clearly is intended to communicate a threat to the physical well-being of the victim, may also satisfy the "threat" element of the crime. For example, mailing a copy of a burial insurance policy to the victim may be a sufficient "threat" to satisfy this element of the crime.

NOTE: The victim and perpetrator need not have any special relationship (for example, "family or household member" as in c. 209A) for stalking to be charged under G.L. c. 265, § 43(a).

3. If there is an outstanding restraining order issued by the Superior Court involving two parties not eligible for a domestic violence restraining order (for example, co-workers who have never had a dating relationship), can stalking in violation of that restraining order be prosecuted under c. 265, § 43(b)?

Yes, the violation of a Superior Court restraining order prohibiting a person from imposing any restraint on the personal liberty of another is no different from the violation of any other restraining order for the purpose of charging the defendant with stalking in violation of a restraining order under G.L. c. 265, § 43(b). However, other violations of non-domestic violence restraining orders are not criminal offenses and are only enforceable through civil contempt proceedings.



4. Can one of the incidents required to prove the elements of stalking have occurred before the effective date of the law?

No. In our view, stalking cannot be charged under these circumstances. All of the conduct necessary to prove the crime of stalking must have occurred after May 18, 1992, the effective date of the law.

5. In charging stalking, what date do you use on the complaint when the incidents giving rise to a charge of stalking occurred on different dates?

You should charge "diverse dates".

6. If the particular circumstances don't support a charge of stalking, what other charges might be brought?

Some examples of the charges which may be brought include:

Intimidation of a Witness, G.L. c. 268, § 13B

Annoying Phone Calls, G.L. c. 269, § 14A

Threat to Commit a Crime, G.L. c. 275, § 2

Annoying or Harassing a Person of the Opposite Sex, G.L. c. 272, § 53

Extortion, G.L. c. 265, § 25

7. Where should the complaint be brought if various incidents occurred in different jurisdictions?

A. We are advising law enforcement officials to bring the complaint in the jurisdiction where the last incident used to satisfy all the elements of the offense occurred, because it is at that time that the crime of stalking has occurred. For example, if a defendant has been waiting outside his former girlfriend's place of work every day in Lynn, and then calls her at her home in Somerville and threatens her life, we would recommend that the complaint be brought in the Somerville District Court. (The Attorney General plans to file legislation which would establish venue in any jurisdiction where an act constituting an element of the crime of stalking occurred.)

B. However, if some of the incidents occur out of state, e.g., at the victim's cottage in New Hampshire, but the most recent one occurs in Massachusetts, it is not clear that a stalking charge can be brought in Massachusetts.

8. Do the incidents underlying a stalking complaint have to occur within a certain period of time?

You will have to determine whether or not the crime of stalking should be charged on a case-by-case basis. There is no requirement under the law that the incidents occur within a certain period of time. For example, in one case, a defendant may threaten a victim and then, once a month appear in front of her home and remain all day. In another case, on a single day, the offender may threaten a victim over the phone, go to her place of employment, be waiting outside of her home later that day and follow her out in the evening. In our view, both of these cases could constitute stalking. However, in some cases, the incidents may be so far apart in time, and their connection so slight, that a stalking charge would be inappropriate or unprovable.

9. What if the restraining order is from another jurisdiction?

As long as it is a Massachusetts order, the location of the issuing court is irrelevant. (The Attorney General's office plans to file legislation to include similar restraining orders issued by courts in other states within the definition of restraining order in the stalking law.)

10. What does the term "threats" mean?

"The word 'threat' has a well established meaning in both common usage and in the law. It is 'the expression of an intention to inflict evil, injury, or damage on another.' (Citation omitted) In law 'threat' has universally been interpreted to require more than the mere expression of intention. It has, in fact, been interpreted to require both intention and ability in circumstances which would justify apprehension on the part of the recipient of the threat." Robinson v. Bradley, 300 F.Supp. 665, 668 (D.Mass.1969) However, in Commonwealth v. Ditsch, the Massachusetts Appeals Court retreated from the requirement that a defendant be able to effectuate his threat. In that case the Appeals Court stated, "[w]e do not think that the absence of immediate ability, physically and personally, to do bodily harm precludes a conviction for threats." 19 Mass. App. Ct. 1005 (rescript) (1985). In Ditsch, the defendant was incarcerated and made threats in letters written to his mother-in-law. The court found that the mother-in-law could reasonably have believed that the defendant actually had the ability to cause her bodily harm, either personally after his release or through his employment of an agent.

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## ARTHUR E. MAHONEY vs. COMMONWEALTH.

Suffolk. March 1, 1993. - May 17, 1993.

Present: LIACOS, C.J., NOLAN, LYNCH, O'CONNOR, &amp; GREANEY, JJ.

*Constitutional Law, Double jeopardy. Abuse Prevention. Contempt. Practice, Civil, Contempt. Practice, Criminal, Contempt.*

Principles of double jeopardy did not prohibit the criminal prosecution of a violation of a protective order issued under G. L. c. 209A, after sanctions under that statute for civil contempt of the same order had been imposed. [283-287]

The procedure followed by a District Court judge in imposing sanctions for civil contempt for violation of a protective order issued under G. L. c. 209A, whereby the contemnor was given notice, was represented by counsel and was given an opportunity to be heard, was lawful. [287]

CIVIL ACTION commenced in the Supreme Judicial Court for the county of Suffolk on March 10, 1992.

The case was reported by *Nolan, J.*

*Richard K. Donahue, Jr.*, for the plaintiff.

*Michael Adam Chinman*, Assistant District Attorney, for the Commonwealth.

LYNCH, J. A single justice of this court has reserved and reported this action under G. L. c. 211, § 3 (1990 ed.), which seeks dismissal of certain criminal charges on the ground of double jeopardy. At issue is whether the Commonwealth may prosecute the plaintiff (hereinafter, defendant) on charges which he contends are based on the same conduct that resulted in his being adjudged in contempt for violating a protective order issued under G. L. c. 209A, § 7 (1990 ed.) (Abuse Prevention Act). We conclude that the judgment of contempt does not bar the Commonwealth from prosecuting the defendant on the pending charges.

in December, 1990, as a result of proceedings initiated by the defendant's wife, a judge in the Ayer Division of the District Court Department issued a series of protective orders under G. L. c. 209A, § 7, ordering inter alia, the defendant to refrain from abusing his wife and to remain away from her household. The orders were effective through March 24, 1992.

In February, 1991, as a result of proceedings initiated by the defendant's girl friend, a judge in the same court issued orders that the defendant refrain from abusing his girl friend and immediately leave and remain away from her household. These orders were effective until February 25, 1992.<sup>1</sup>

On December 11 and 12, 1991, two criminal complaints were issued charging the defendant with assault and battery on his wife, and with violating a protective order and making criminal threats against his girl friend.<sup>2</sup> At the arraignment in the Ayer District Court, a judge held a contempt hearing to decide whether the defendant's conduct, as alleged in the criminal complaints, violated the protective orders.<sup>3</sup> The de-

<sup>1</sup>On December 11, 1991, a judge issued a similar set of restraining orders and included a provision that the defendant have "no contact directly or indirectly with [his girl friend], including telephone communication." These orders were made effective until December 16, 1992.

<sup>2</sup>In bills of particulars provided to the defendant in February, 1992, the Commonwealth described the charges as follows: (1) the assault and battery allegedly occurred on December 10, 1991, at the wife's household when the defendant "did assault and beat [his wife] in that he punched, pushed and grabbed her about the head and body"; (2) the violation of the protective order and the threat to commit a crime allegedly occurred on December 10, 1991, when the defendant telephoned his girl friend and threatened to kill her.

<sup>3</sup>General Laws c. 209A, § 7 (1990 ed.), states in pertinent part: "Criminal remedies provided herein are not exclusive and do not preclude any other available civil or criminal remedies. The superior, probate and family, district and Boston municipal court departments may each enforce by civil contempt procedure a violation of its own court order."

The defendant did not object to the contempt hearing procedure as announced by the judge, and was provided approximately one and one-half hours to prepare for the hearing.

At the arraignment, when asked by the judge whether there was a question of bail, the assistant district attorney stated that the defendant had been released on \$100 cash bail on one of the charges.



fendant's wife, his girl friend, and a man who lived with the defendant testified. The judge found the defendant in contempt.<sup>4</sup>

At the sentencing hearing the following day,<sup>5</sup> defense counsel asked, "Your honor, we are in agreement, then, that what took place yesterday was a civil contempt proceeding?" The judge responded, "Oh, I don't think I have much trouble with that. . . . What occurred yesterday was a contempt proceeding under the specific statutory grant of [G. L. 209A] that authorizes a court to consider whether or not a defendant under a restraining order is in contempt of that order." Defense counsel then restated his question, "And therefore it's a civil proceeding. Correct?" To which the judge responded, "I'm not going to characterize it. It may well be. It certainly didn't — it's not a criminal proceeding, but it's one that's being conducted specifically under a statutory grant."<sup>6</sup>

<sup>4</sup>The judge stated: "I don't have any doubt at all that on the date in question this defendant, in clear violation of the Court's order, went on those premises [his wife's residence]. And he didn't just violate the order by going on the premises or raising his voice, he took after her and beat on her. And that's exactly what this order was attempting to forestall, that he was not to be engaging in acts of violence towards this woman. And I consider that to be willful and deliberate and [contumacious] it's conduct in clear violation and in contempt of this Court's order. And if this Court is going to have any way of seeing that its orders get enforced, it's going to start considering actions like this before we get to questions about whether [there] on some criminal case that was an assault and battery or whether that conduct amounted to a violation of a protective order. . . . [T]his man is out of control."

"He's out of control with both people. And one of them may invite more of it than the other, but he has to be dealt with. . . ."

"I have no assurances that this woman is going to be safe as long as he's on the street while these cases are pending. . . . I'm finding him in contempt and . . . I'm going to tell you what I'm going to do about it."

<sup>5</sup>The hearing was adjourned until the following day at the request of defense counsel.

<sup>6</sup>The judge then continued: "I view this to be an extremely urgent matter, of great exigency, that poses a clear and present danger to each of the women in this case. I've heard the evidence. I'm persuaded that — by clear and convincing evidence as a matter of fact, that this man . . . beat his wife, as the history has been in the past, that he punched her all over the place, that he banged her off two or three walls; that as a result, she came back seeking further relief in the face of an existing restraining or-

After further discussion with both defense counsel and the assistant district attorney, the judge concluded:

der. It's not good enough for me to say, 'Well, now we ought to have a complaint issue for contempt [pursuant to Mass. P. Civ. P. Rule 65.3, as defense counsel had requested]. We'll await an answer for twenty days and we'll go on.'

"See, there are other remedies that I even considered yesterday — while we're talking about what occurred — and that is, it was clear to me that this defendant, as you've indicated earlier, was before the Court for arraignment on the violation of a restraining order and he was before the Court on an assault and battery on his wife. And I could have considered, for example, the question of setting some kind of bail. But that would be a misuse of bail in my opinion, because that was not the purpose of the bail statute. We don't have preventative detention in this Commonwealth yet. And so I'm not going to start resorting to that under the bail statute. . . .

"My concern here is the safety and well being of two women, most especially this man's wife. He has the demonstrated capacity to cause serious physical injury on the one hand and he has the demonstrated capacity to make life-threatening assertions on the other. So I'm not going to wait for some 20-day proceeding and an opportunity to set this down for some kind of discovery and all of those things that might attend the normal civil contempt proceeding."

"I'm satisfied from what I heard yesterday, as I indicated earlier, by clear and convincing evidence, that this defendant beat this woman, his wife; that he made threats to the other woman under a separate restraining order; that that conduct is in flagrant and deliberate and clear violation of this Court's order; that if this Court is going to do anything to see to the proper enforcement of its orders, it should and it must, and it has the authority, as I read [G. L. c. 209A], to undertake an immediate . . . forthwith determination of whether or not a particular defendant is in contempt of an existing court order."

Defense counsel then read from G. L. c. 209A, § 7, stating, "The Superior, Probate, Family, District and Boston Municipal Court departments may enforce by civil contempt procedure a violation of its own court order." To which the judge responded, "So I don't disagree with you. If you want to characterize it as civil contempt, I don't disagree with that. . . . The problem with it, however, is, what is the appropriate procedure or remedy to be followed." Defense counsel later stated, "And for that reason, I was thinking of — it called — [G. L. c. 209A], a civil contempt proceeding." To which the judge again responded, "Right. And that's exactly what we had."

In response to defense counsel's comment that "additional confusion came by utilizing the district attorney's office to prosecute a civil contempt," the judge responded: "[T]here's been some reference made to the fact that the Commonwealth — the prosecutor participated in the proceeding, and I'm very mindful that that was exactly what occurred. And, in fact, that was at my instruction. Because I see a risk, that if we don't have



"And having heard the evidence and having made the findings that I have made, I do find this defendant in civil contempt. And in accordance with that, and as the only means I have of assuring the enforcement of this Court's orders, I'm committing him to the common jail for a period of thirty days. He may — he may post the sum of \$5,000 cash . . . with the clerk of this court. And the condition of the posting of that cash will be, that he will have absolutely no contact whatsoever with either woman in this case, directly or indirectly, at the risk of the forfeiting of that \$5,000 cash and a further review of whether there is a new contempt. In other words, he's being committed for thirty days. He can purge himself of that contempt by posting the \$5,000 cash with the clerk's office on the conditions that I have sought to identify here this morning."

When defense counsel objected to the "amount of the bail of \$5,000 cash," the judge responded:

"Oh, it's not bail. . . . I'm committing him in and finding him in civil contempt and I'm committing him for a term of thirty days to the common jail. I'm going to permit him to purge himself of that contempt by posting in the clerk's office \$5,000 cash money . . . the strict condition of which is that he's to have no contact directly or indirectly with the women involved in this case. If he posts the \$5,000 cash and he's prepared to

an adversary-type proceeding and the judge starts injecting himself into the case, that that's subject to criticism as well. And it was for that reason that I vested in the hands of two attorneys . . . of the presentation that occurred before this Court yesterday. And I'm also at pains to say that I know of nothing . . . that was or could have been adduced in this proceeding in behalf of this defendant that either was identified, or even this morning, is identifiable that would — that could not and was not reached directly yesterday . . . . And so I am, and I was, mindful yesterday that I'm not going to compel anybody to participate in a proceeding unless they understand it and they have a fair opportunity to defend themselves. And it seems to me that that's — that all of those standards were met yesterday."

come before the Court and make the representation that he understands the conditions and will abide by them, I will purge him of the contempt. Short of that, he stands committed."

The defendant was incarcerated from December 18, 1991, to January 16, 1992. On February 11, 1992, after electing a first instance jury trial, resulting in the transfer of the criminal complaints to the Lowell District Court jury session, the defendant moved to dismiss the complaints on the ground of double jeopardy. A judge in that court denied the motions.<sup>7</sup> Thereafter, a petition was filed with a single justice of this court under G. L. c. 211, § 3, seeking a stay of the defendant's trial and dismissal of the charges. One single justice granted a stay on April 27, 1992; another single justice served and reported the matter to the full court on October 27, 1992.

1. The double jeopardy clause of the Fifth Amendment to the United States Constitution protects against three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense.<sup>8</sup> *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969). *Commonwealth v. Woods*, 414 Mass. 343, 346 (1993). It is the third of these abuses that we are concerned with here. If the judge below was exercising his authority in a nonpunitive, noncriminal manner, there was no "punishment" in the constitutional sense that would involve the double jeopardy clause. *Hicks v. Feiock*, 485 U.S. 624, 640-641 (1988).

<sup>7</sup>The defendant's motion for reconsideration was denied in April, 1992.

<sup>8</sup>The double jeopardy clause of the Fifth Amendment to the United States Constitution provides: "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb." It is applicable to the States through the Fourteenth Amendment to the United States Constitution. *Grady v. Corbin*, 495 U.S. 508, 510 n.1 (1990). Although not expressly included in the Massachusetts Declaration of Rights, it has long been recognized as part of our common and statutory law. *Commonwealth v. Woods*, 414 Mass. 343, 346 (1993). G. L. c. 263, § 7 (1990 ed.).



In order to determine whether the judge below imposed punishment, we focus on the sanction imposed on the defendant. *United States v. Halper*, 490 U.S. 435, 447 (1989). *Hicks v. Feiock*, *supra* at 636.

“‘If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court.’ *Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 441 (1911). The character of the relief imposed is thus ascertainable by applying a few straightforward rules. If the relief provided is a sentence of imprisonment, it is remedial if ‘the defendant stands committed unless and until he performs the affirmative act required by the court’s order,’ and is punitive if ‘the sentence is limited to imprisonment for a definite period.’ *Id.*, at 442. If the relief provided is a fine, it is remedial when it is paid to the complainant, and punitive when it is paid to the court, though a fine that would be payable to the court is also remedial when the defendant can avoid paying the fine simply by performing the affirmative act required by the court’s order.” *Hicks v. Feiock*, *supra* at 631-632.<sup>9</sup>

When we apply these rules to the instant case, it is clear that the sanction imposed on the defendant was civil in nature. The sanction was remedial and specifically designed to compel compliance with the protective orders that the defendant had previously disobeyed. In addition, the sentence imposed was not for a definite period. Rather, it was structured so that the defendant could purge himself of the sentence at any time if he posted the required cash amount and

<sup>9</sup>See *Local 28 of the Sheet Metal Workers’ Int’l Ass’n v. EEOC*, 478 U.S. 421, 443 (1986) (“Criminal contempt sanctions are punitive in nature and are imposed to vindicate the authority of the court. *United States v. Mine Workers*, 330 U.S. 258, 302 [1947]. On the other hand, sanctions in civil contempt proceedings may be employed ‘for either or both of two purposes: to coerce the defendant into compliance with the court’s order, and to compensate the complainant for losses sustained.’ *Id.*, at 303-304”).

represented to the court that he would have no further contact with the women. Such a sanction is a proper civil contempt remedy. See *Shillitani v. United States*, 384 U.S. 364 (1966) (sentence must be viewed as civil in nature if court conditions release on contemnor’s willingness to comply with order or imposes determinate sentence which includes purge clause); *Gompers v. Buck’s Stove & Range Co.*, *supra* at 442 (conditional nature of punishment renders relief civil since contemnor “can end the sentence and discharge himself at any moment by doing what he had previously refused to do”).

Similarly, the cash-posting requirement was also conditioned on the defendant’s compliance with the protective court order. It was also a proper civil contempt sanction. See *Hicks v. Feiock*, *supra* at 631-632. *Labor Relations Comm’n v. Fall River Educators’ Ass’n*, 382 Mass. 465, 475 (1981) (conditional, coercive orders considered civil contempt). Contrary to the defendant’s argument, the cash requirement was not a “fine”; it was merely designed to ensure that the defendant complied with the terms of the original restraining order. Even if it was intended that the sum revert to the Commonwealth if the defendant again violated the court order, that would not make the sanction criminal where the primary objective of such a prospective “fine” is to coerce compliance with a court order. *Labor Relations Comm’n v. Fall River Educators’ Ass’n*, *supra* at 475-476.

The defendant’s reliance on *United States v. Halper*, *supra*, is misplaced. The question the Supreme Court addressed in *Halper*, *supra* at 443, was “whether a civil sanction, in application, may be so divorced from any remedial goal that it constitutes ‘punishment’ for the purposes of double jeopardy analysis.” The Court held that “under the Double Jeopardy Clause a defendant who already has been punished in a criminal prosecution may not be subjected to an additional civil sanction to the extent that the second sanction may not fairly be characterized as remedial, but only as a deterrent or retribution.” *Id.* at 448-449. The Court then emphasized:



"What we announce . . . is a rule for the rare case, the case such as the one before us, where a fixed-penalty provision subjects a prolific but small-gauge offender to a sanction overwhelmingly disproportionate to the damages he has caused. The rule is one of reason: Where a defendant previously has sustained a criminal penalty and the civil penalty sought in the subsequent proceeding bears no rational relation to the goal of compensating the Government for its loss, but rather appears to qualify as 'punishment' in the plain meaning of the word, then the defendant is entitled to an accounting of the Government's damages and costs to determine if the penalty sought in fact constitutes a second punishment. . . . [T]he only proscription established by our ruling is that the Government may not criminally prosecute a defendant, impose a criminal penalty upon him, and then bring a separate civil action based on the same conduct and receive a judgment that is not rationally related to the goal of making the Government whole." *Id.* at 449-451.<sup>10</sup>

As to the defendant's argument grounded on his claimed inability to post the required amount, it is settled that, in a civil proceeding, the defendant had the burden of proving his inability to comply with the court order. *United States v. Rylander*, 460 U.S. 752, 757 (1983). *Commonwealth v. One 1987 Ford Econoline Van*, 413 Mass. 407, 412 (1992). Here, the defendant's counsel objected to the "amount of the bail"

<sup>10</sup>Four cases cited by the defendant can be distinguished on their facts: *United States v. Dixon*, 598 A.2d 724 (D.C. 1991), cert. granted, 112 S. Ct. 1759 (1992) (defendant initially prosecuted for criminal contempt); *State v. Kipi*, 72 Haw. 164, cert. denied, 112 S. Ct. 194 (1991) (defendant initially prosecuted for criminal contempt); *State v. Vanselow*, 61 Ohio Misc. 2d 1 (1991) (sanction imposed constituted criminal punishment based on overly-broad reading of *United States v. Halper*, *supra*); *State v. Magazine*, 302 S.C. 55 (1990) (sanction of one year imprisonment suspended on payment of \$1,500 fine and compliance with restraining order constituted criminal contempt since defendant had to serve sentence or pay fine).

set by the judge, but introduced no evidence on the defendant's inability to pay.

2. The defendant argues that, even if the proceeding was civil in nature, the judge should have followed the procedure outlined in Mass. R. Civ. P. 65.3, as appearing in 386 Mass. 1244 (1982) (proceedings for civil contempt). Rule 65.3 applies to the enforcement of restraining orders and injunctions generally. The procedures delineated are inconsistent with the clear intent of c. 209A, that there be speedy intervention by the courts in domestic disputes to protect the health and safety of the domestic partners. Moreover, the rule does not apply to the District Court Department. See Mass. R. Civ. P. 1, 365 Mass. 730 (1974). Although the District Court rules incorporate many of the Massachusetts Rules of Civil Procedure including rules 65 and 65.1, rule 65.3 was not adopted. See Mass. R. Civ. P. 65, 365 Mass. 832 (1974); Mass. R. Civ. P. 65.1, 365 Mass. 834 (1974); Mass. R. Civ. P. 65.2, as amended, 376 Mass. 948 (1979); Mass. R. Civ. P. 65.3; Dist./Mun. Cts. R. Civ. P. 65-66 (1992). In such a situation the District Court rules authorize the court to "proceed in any lawful manner." Dist./Mun. Cts. R. Civ. P. 81 (1992). Since the defendant was given notice, was represented by counsel, and was afforded an opportunity to be heard, the procedure followed by the judge was lawful. This is especially so considering, as noted above and as specifically commented on by the judge, the requirements for speedy intervention in G. L. c. 209A.

We hold that, since the contempt sanction was civil in nature, proceeding with criminal charges against the defendant will not offend the double jeopardy clause. A judgment is to

enter denying the defendant relief under G. L. c. 211, § 3."

*So ordered.*

PAUL J. CREMINS & another<sup>1</sup> vs. JOHN W. CLANCY, JR.

Middlesex. March 3, 1993. - May 17, 1993.

Present: LIACOS, C.J., NOJAN, LYNCH, O'CONNOR, & GREANEY, JJ.

*Negligence, Serving alcoholic liquors to guest. Alcoholic Liquors, Liability of host, Motor vehicle. Practice, Civil, Instructions to jury.*

On a claim that a seventeen year old defendant was negligent because, while acting as a social host, he permitted a seventeen year old friend to become intoxicated on beer knowing that the friend would operate his own automobile, which he later did operate, causing an accident seriously injuring the plaintiffs, the jury, in answer to a special question, appropriately concluded that the defendant had not been negligent in his conduct as a social host where, in the absence of a right to exercise control over his friend, the defendant was not subject to a duty to protect the plaintiffs. [291-294] O'CONNOR, J., concurring, with whom LYNCH, J., joined.

At a civil trial, the judge correctly declined a request for instructions to the jury which would have adopted as a rule of common law the position that a host breaches his duty to innocent third persons by permitting a minor to consume any amount of alcoholic beverage that contributes to the minor's intoxication, resulting in injury, where violations of the Commonwealth's liquor laws concerning minors "do not expressly or implicitly grant an independent ground for civil liability," and where it has long been the rule in the Commonwealth that "violation of a statute does not by itself establish a breach of duty, for it does not constitute negligence per se." [294-296]

CIVIL ACTION commenced in the Superior Court Department on February 8, 1990.

The case was tried before *Wendie I. Gershengorn, J.*, and a motion for a new trial was heard by her.

The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

<sup>1</sup>His wife, Donna A. Cremins.

"We note that in the bill of particulars that alleges a violation of a restraining order, the Commonwealth incorrectly states that "the defendant failed to comply with the provisions of Restraining Order # 9148-56, which indicates that the defendant have 'no contact directly or indirectly with the plaintiff, including telephone communications,' by telephoning [his girl friend] and making threatening comments to her." The provision that orders the defendant to have "no contact . . . with the plaintiff, including telephone communication" was added to the restraining order on December 11, 1991, after the defendant was alleged to have made the threatening telephone call.

The bill should have alleged that the defendant violated the order by "abusing" the woman, since the definition of "abuse" includes "placing another in fear of imminent serious physical harm." G. L. c. 209A, § 1 (1990 ed.).



## OVERVIEW OF PROPOSED AMENDMENTS TO THE STALKING LAW

Since the stalking law was enacted in 1992, police officers and district attorneys have expressed concerns regarding cases that the law, as drafted, does not reach. After listening to the problems voiced by law enforcement officials -- many elicited at the 1992 Domestic Violence Conference -- the Attorney General's Office drafted amendments to the law which are designed to remedy several major areas of concern.

The proposed legislation has three parts. First, the legislation simplifies the underlying elements of the crime of stalking by deleting the "threat" element. By removing this element, the Commonwealth would not have to plead and prove that the conduct included an actual, express threat to the victim, as long as it was shown that the defendant intended to place the victim in imminent fear. This important amendment will substantially ease the burden in charging and prosecuting stalking cases. If this legislation is enacted, the remaining elements of the crime of stalking will be:

- \* wilfully, maliciously, and repeatedly
- \* follows or harasses another
- \* with the intent to place that person in imminent fear of death or serious bodily injury.

Second, the bill provides that outstanding restraining orders issued by other states will be valid in Massachusetts for purposes of charging under the stalking law. This means

that a defendant cannot escape prosecution and the strict penalties under subsection (b) of the stalking law simply because an outstanding restraining order was issued by another jurisdiction.

Third, the stalking amendments allow the Commonwealth to bring a stalking case in any county where any element of stalking occurred. Thus, if the victim was threatened at her home in Malden, then repeatedly harassed at her parent's home in Pittsfield, with the harassment providing the final element of the crime, the charge clearly could be brought in her "home" court of Malden.

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## SUMMARY OF PROPOSED LEGISLATION REGARDING FIREARMS

### AN ACT TO PREVENT DOMESTIC AND OTHER VIOLENCE

Legislation has been proposed to address the danger posed by firearms in domestic violence situations. While adjustments are still being made, the current draft of the legislation does the following:

- \* Prohibits the issuance of an FID card or license to carry to any person against whom there is an outstanding domestic violence restraining order.
- \* Specifies that upon denial of an application for an FID card or license to carry, or its suspension or revocation, the applicant or holder must deliver, without delay, all firearms and ammunition to the licensing authority.
- \* Requires the suspension of an FID card or license to carry if a domestic violence restraining order is issued against the card holder, provided that the order is not subsequently invalidated or vacated; the suspension period must be at least as long as the duration of the order.
- \* Allows an applicant or holder to appeal the denial, revocation or suspension of an FID card or license to carry to the licensing authority. If the FID card or license to carry is suspended based upon issuance of a domestic violence restraining order, the holder may have a hearing for its return in court, at the ten day hearing, with notice and an opportunity to be heard provided to the licensing authority.
- \* Requires FID cards to be renewed every five years to allow periodic review of a cardholder's record, and establishes an expiration schedule for current FID cards.
- \* Increases the application fee for an FID card, and earmarks a portion of the proceeds generated by increasing the application fee for inputting firearms information into the criminal justice information system.
- \* Requires the licensing authority to record all action taken on FID cards and to forward such information to the commissioner of public safety for inclusion in the criminal justice information system.
- \* Requires the licensing authority to search the statewide domestic violence recordkeeping system to determine if an applicant for an FID card or a license to carry firearms has a domestic violence restraining order in effect against him/her.



- \* Prohibits the issuance of a temporary license to carry to nonresidents or aliens against whom there is an outstanding domestic violence restraining order.
- \* Permits the suspension of and prohibits the renewal of a temporary license to carry for nonresidents or aliens if a domestic violence restraining order is issued against the license holder or if the license holder is convicted of a felony or a drug-related offense.
- \* Requires the holder of an FID card or license to carry to notify the licensing authority of the occurrence of any event which would have disqualified the holder from obtaining the card or license initially and, in the case of a license to carry, of conviction of any crime.

**Title I -- Safe Streets for Women**

**Creates New Penalties for Sex Crimes**

- Creates new penalties for sex offenders.
- Increases restitution for the victims of sex crimes.

**Encourages Women to Prosecute Their Attackers**

- Extends "rape shield law" protection to civil cases (e.g. sexual harassment cases) and all criminal cases (other than sexual assault cases where it already applies) to bar embarrassing and irrelevant inquiries into a victim's sexual history at trial.
- Bars the use of a woman's clothing to show, at trial, that the victim incited or invited a sexual assault.
- Requires States to pay for rape exams.

**Targets Places Most Dangerous for Women, Including Public Transit and Parks**

- Authorizes \$300 million for law enforcement efforts to combat violence against women, aiding police, prosecutors and victim advocates.
- Funds increased lighting and camera surveillance at bus stops, bus stations, subways and parking lots and targets existing funds for increased lighting, emergency telephones and police in public parks.

**Education and Prevention**

- Authorizes \$65 million for rape education, starting in junior high.

**Establishes the "National Commission on Violent Crime Against Women"**

- Creates a commission to develop a national strategy for combating violence against women.

**Title II -- Safe Homes for Women**

**Protects Women from Abusive Spouses**

- Creates federal penalties for spouse abusers who cross state lines to continue their abuse.
- Requires all states to enforce any "stay-away" order, regardless of which state issues it.

**Promotes Arrests of Abusive Spouses**

- Authorizes \$25 million for states that promote the arrest of abusing spouses and experiment with new techniques to increase prosecution.

**Provides More Money for Shelters**

- Boosts funding for battered women's shelters.

**Establishes a National Domestic Violence Hotline**

- Provides federal funding for a national domestic violence hotline (Senator Kennedy).

**Increases Research and Data**

- Authorizes research and increases data collection on violence against women.

**Title III -- Civil Rights for Women**

**Extends "Civil Rights" Protections to All Gender-Motivated Crimes**

- Makes gender-based assaults a violation of federal civil rights laws.
- Allows victims of all felonies "motivated by gender" to bring civil rights suits against their assailants.

**Title IV -- Safe Campuses for Women**

**Funds Rape Prevention Programs**

- Boosts to \$20 million funding for the neediest colleges to fund campus rape education and prevention programs.

**Title V -- Equal Justice for Women**

**Makes Courts Fairer by Training Judges**

- Creates training programs for State and Federal judges to raise awareness and increase sensitivity about crimes against women.



THE VIOLENCE AGAINST WOMEN ACT  
Side-by-Side Comparison  
S. 11 and H.R. 1133

HOUSE

Title I - SAFE STREETS FOR WOMEN

Subtitle A - Law Enforcement and Prosecution Grants

- Authorizes \$200 million to assist states and law enforcement agencies in developing effective law enforcement and prosecution strategies, including police training programs and data collection systems, to combat violent crime against women.
- Requires states to reimburse sexual assault victims for the cost of rape examinations in order to be eligible for the law enforcement grants.

Subtitle B - Rape Prevention Grants

- Authorizes grants of \$60 million for rape prevention and education efforts, including educational seminars for school-age children, operation of telephone hot-lines, training programs for professionals who come into contact with sexual assault and domestic violence victims, treatment programs for sex offenders, and community education and awareness programs.
- *Creates a \$1 million training program within the National Institute of Justice for personnel who work with sex offenders and requires the Attorney General to ensure that community treatment information is made available to released sex offenders.*

Subtitle C - Victim Compensation

- Mandates financial restitution be paid to victims by defendants convicted of federal sex offenses.

Subtitle D - Natl. Board on Violent Crime Against ?

- *Establishes an Interagency Advisory Board on Violent Crime Against Women to review and evaluate programs and policies developed by federal agencies to address violence against women.*

Subtitle E - Safe Campuses for Women

- *Authorizes \$200,000 for the Attorney General to conduct a national baseline study to examine the problem of campus sexual assaults and the effectiveness of policies in addressing these crimes and protecting victims.*

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NOTE: *Italics denote differences between House and Senate bill*

SENATE

TITLE I - SAFE STREETS FOR WOMEN

Subtitle A - Federal Penalties for Sex Crimes

- *Requires U.S. Sentencing Commission to review and amend federal sentencing guidelines for sex offenders and to recommend to Congress amendments regarding penalties if appropriate, including repeat offenders.*
- Requires that victims of federal sex crimes be fully compensated by the defendant (Similar to Subtitle C, Title I of H.R. 1133).
- *Authorizes \$1.5 million for victim witness counselors to assist federal prosecutors*

Subtitle B - Law Enforcement and Prosecution Grants

- *Authorizes \$100 million for law enforcement and prosecution grants in 40 "high intensity" crime areas. Requires Bureau of Justice Statistics to compile list of 40 areas with highest rates of violent crime against ?*
- Authorizes \$200 million for grants to states and Indian tribes for law enforcement and prosecution of violent crimes against women. (Similar to Subtitle A, Title I of H.R. 1133)

Subtitle C - Safety for Women on Public Transit and Public Parks

- *Authorizes \$35 million for increased lighting, camera surveillance, emergency phones and security personnel in public transportation systems, public parks and the National Park system.*

Subtitle D - Justice Department Task Force on Violence Against Women

- The Attorney General shall appoint a 15-member task force to evaluate and assess federal and state laws and policies regarding violent crime against women and make recommendations for how to prevent and respond to violent crime against women.

Subtitle E - New Evidentiary Rules

- Amends the Federal Rules of Evidence to limit the admissibility of evidence of a victim's past sexual behavior and to prohibit a victim's reputation or opinion about the victim's past sexual behavior from being admissible in federal criminal cases or in civil



cases including those brought under Title VII of the 1964 Civil Rights Act or under the Civil Rights section of the Violence Against ♀ Act (Similar to Subtitle A, Title IV, H.R. 1133)

- Prohibits evidence of a victim's clothing from being admitted in federal sex offense cases to show that the victim incited or invited the assault. (same as Subtitle A, Title IV, H.R. 1133)

#### Subtitle F - Assistance to Victims of Sexual Assault

- Authorizes \$65 million for rape prevention and education programs, including educational seminars, operation of hotlines, training programs for professionals and preparation of informational materials (Similar to Subtitle B, Title I, H.R. 1133)
- Requires states to incur full cost of forensic medical exams for victims of sexual assault in order for states to be eligible for funds under Title I of VAWA (Similar to provision in Subtitle A, Title I of H.R. 1133)
- *Authorizes \$10 million for treatment, counseling, information and referral of female runaway, homeless, and street youth who are being or are at risk of being sexually abused.*
- *Amends Federal Rules of Criminal Procedure to permit victims or family members the right to address the court before sentencing.*

## TITLE II - SAFE HOMES FOR WOMEN

### Subtitle A - Interstate Enforcement

- Creates federal criminal penalties for anyone who travels across state lines to contact their spouse or intimate partner and then causes that person bodily harm.
- Creates penalties for traveling across state lines and violating a protection order.
- Provides mandatory restitution to the victim of an offense under this title.
- Provides that the victim of a crime under this subtitle may be heard by the court regarding the danger posed by the defendant for the purpose of determining whether the defendant should be released pending trial, or for determining conditions for such release.
- Requires states to fully enforce protection orders issued by the court of another state.

## TITLE II - SAFE HOMES FOR WOMEN

### Subtitle A - Family Violence Prevention and Services Act Amendments

- *Authorizes \$500,000 for the operation of a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence.*

### Subtitle B—Interstate Enforcement

- Creates federal criminal penalties for anyone who travels across state lines with intent to injure their spouse or intimate partner.
- Provides that the victim of a crime under this subtitle may be heard by the court (Similar to provision in Subtitle A, Title II of H.R. 1133)
- Provides mandatory restitution to the victim of an offense under this title.
- Requires states to fully enforce protection orders issued by the court of another state.



TITLE III - CIVIL RIGHTS

- \* Declares crimes motivated by the victim's gender to be bias crimes that violate the victim's right to be free from discrimination on the basis of gender.
- \* Gives victims of rape, sexual assault, and other violent felonies committed because of gender or on the basis of gender the right to bring a civil action against the attacker in a federal court. Random violent acts that are unrelated to gender, as well as acts that cannot be demonstrated by a preponderance of evidence to be gender-motivated, are not covered.

TITLE IV - EQUAL JUSTICE FOR ♀ IN THE COURTS

## Subtitle A - New Evidentiary Rules

- \* Amends the Federal Rules of Evidence to limit the admissibility of evidence of a victim's past sexual behavior and to prohibit a victim's reputation or opinion about the victim's past sexual behavior from being admissible in federal criminal cases or in civil cases including those brought under Title VII of the 1964 Civil Rights Act or under the Civil Rights section of the VAWA (Simil. to Title I, Subt. E, S.11).
- \* Prohibits evidence of a victim's clothing from being admitted in federal sex offense cases to show that the victim incited or invited the assault (Same as Title I, Subtitle E, S.11).

## Subtitle B - Education and Training for Judges and Court Personnel in State Courts

- \* Authorizes \$600,000 in fy '94 for the State Justice Institute to award grants for the purpose of developing, testing, presenting and disseminating model programs to be used by states in training judges and court personnel in the laws of the state on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender.

## Subtitle C - Education and Training for Judges and Court Personnel in Federal Courts

- \* Authorizes \$600,000 in fy '94 for the circuit judicial councils to study gender bias in their respective circuits.
- \* Requires the Federal Judicial Center to include in its judicial educational and training programs information related to gender bias in the courts. Authorizes \$100,000 for this purpose and for a clearinghouse to disseminate reports and materials generated by gender bias studies.

TITLE III - CIVIL RIGHTS

- \* Declares crimes motivated by the victim's gender to be bias crimes that violate the victim's right to be free from discrimination on the basis of gender.
- \* Gives victims of violent felonies committed because of gender or on the basis of gender *and due at least in part to an animus based on the victims gender* the right to bring a civil action against the attacker in a federal court. Random violent acts...(Same as Title III, H.R. 1133)
- \* *Expresses the sense of Congress that news media, law enforcement officers, and others should exercise restraint and respect for a rape victim's privacy by not disclosing the victim's identity.*

TITLE IV - SAFE CAMPUSES FOR WOMEN

- \* *Authorizes \$20 million for rape prevention programs on campuses.*

TITLE V - EQUAL JUSTICE FOR WOMEN IN THE COURTS

## Subtitle A - Education and Training for Judges and Court Personnel in State Courts (Same as Subtitle B, Title IV, H.R.1133)

## Subtitle B - Education and Training for Judges and Court Personnel in Federal Courts

- \* Encourages the circuit judicial councils to study gender bias in their respective circuits and authorizes \$400,000 for this purpose.
- \* Requires the Federal Judicial Center to include in its judicial educational and training programs information related to gender bias in the courts. Authorizes \$100,000 for this purpose and for a clearinghouse to disseminate reports and materials generated by gender bias studies.

TITLE VI - VIOLENCE AGAINST WOMEN IMPROVEMENTS

- \* *Includes: pretrial detention in sex offense cases; increased penalties for offenses against victims below age of 16; payment for victim's HIV tests; restitution for victims; additional revisions of evidentiary rules; studies of campus sexual assault and battered women's syndrome; report on record keeping and confidentiality of addresses for victims; and authorization of increase funding for states providing requisite programs.*



#### **Subtitle B - Arrest in Domestic Violence Cases**

- \* Authorizes \$25 million for grants to implement mandatory arrest programs, improve tracking of domestic violence cases, centralize and coordinate domestic violence cases, strengthen legal advocacy service programs for victims of domestic violence, and educate members of the criminal justice system about domestic violence to improve handling of such cases.**

#### ***Subtitle C - Safe Homes for Immigrant Women***

- \* Permits immigrant spouses of U.S. citizens and legal residents to self-petition for legal resident status based on a valid marriage, thus preventing abusive spouses from controlling the battered immigrant's legal status.***
- \* Makes battered immigrant family members eligible for work authorization and stay of deportation, ending the economic dependency that forces battered immigrant women and children to stay in an abusive home.***
- \* Allows battered immigrant family members to petition for permanent U.S. residency after the legal termination of a valid marriage.***
- \* Provides due process rights to battered immigrants whose claims have been denied by allowing them to present evidence and witnesses in support of their application.***

#### **Subtitle D - Confidentiality for Abused Persons**

- \* Protects the confidentiality of abused persons' addresses by prohibiting disclosure of battered women's addresses.**

#### **Subtitle C - Arrest in Spouse Abuse Cases**

- \* Authorizes \$25 million for grants to implement pro-arrest programs, improve tracking of domestic violence cases, centralize and coordinate domestic violence cases, and educate judges about domestic violence to improve handling of such cases.**

#### **Subtitle D - Funding for Shelters**

- \* Authorizes \$85 million for the Family Violence Prevention and Services Act.***

#### **Subtitle E - Family Violence Prevention and Services Act Amendments**

- \* Ensures that the needs of underserved racial, cultural, and ethnic minority populations are addressed and requires the submission of annual performance reports and assessments.***

#### ***Subtitle F - Youth Education and Domestic Violence***

- \* Authorizes \$400,000 for the development of four model programs for the education of young people about domestic violence.***

#### **Subtitle G - Confidentiality for Abused Persons**

- \* Protects the confidentiality of abused persons' addresses by prohibiting disclosure of battered women's addresses.**

#### **Subtitle H - Technical Amendments**

#### ***Subtitle I - Data and Research***

- \* Authorizes development of a research agenda to increase understanding and control of violence against ♀***
- \* Requires the Dept. of Justice to study how states may collect centralized databases on the incidence of domestic violence offenses within a state.***
- \* Requires the Centers for Disease Control to study the incidence of injuries resulting from domestic violence, the cost of such injuries, and to recommend strategies for reducing the incidence and cost of such injuries.***



# Domestic Violence

## *A Crime, Not a Quarrel*

Joseph R. Biden

**I** imagine a world in which 3 to 4 million people are suddenly struck by a serious, recurring illness. There is chronic pain, trauma, and injury. Authorities fail to draw any connection between individual bouts with the disease and the greater public threat. Many suffer in silence.

This is the United States of America in 1993: The disease is violence, and the victims are predominantly women who are beaten in their own homes.

For too long, we as a nation have failed to grasp either the scope or the seriousness of domestic violence. If the leading newspapers were to announce tomorrow the discovery of a new disease affecting 3 to 4 million women every year, few would fail to appreciate the seriousness of the illness. Yet, when it comes to the 3 to 4 million women who are victimized by violence in their own homes,<sup>1</sup> the alarms sound faintly.

For the past four years, the U.S. surgeons general have warned that domestic violence—not heart attacks or cancer or strokes—poses the single largest threat of injury to adult women in this country.<sup>2</sup> But no matter how often this has been repeated, we still hear those who deny and distance this violence by calling it a family problem, a private matter, or a question of miscommunication.

Until the 20th century, this nation actually condoned domestic violence,

following a common law rule known as the “rule of thumb.” This barred a husband from “restrain[ing] a wife of her liberty” by “chastisement” with a stick any thicker than a man’s thumb.<sup>3</sup> The rule, originally intended to protect women from excessive violence, ironically institutionalized domestic violence.

Unfortunately, this common law principle has left a legacy of legal blindness toward violence against women. Decades after the “rule of thumb” disappeared, many jurisdictions in the United States still refused to arrest and prosecute spouse abusers, even in cases where a comparable assault by a stranger on the street would have led to a lengthy jail term. For example, a 1989 study in the nation’s capital found that in over 85 percent of the domestic violence cases where a woman was found bleeding from wounds, police did not arrest her abuser.<sup>4</sup>

History and language have conspired to convince us that domestic violence is somehow “domesticated”—tame. Every time we use the words “domestic violence,” we invoke this history and suggest that this violence is somehow less serious than an assault on the street. The reality is far different than our language suggests. For example, family violence accounts for a significant number of murders in this country. Every day four women are killed by their male partners, and at least one-third of all women who are murdered die at the hands of a husband or boyfriend.<sup>5</sup>

Indeed, *most* domestic violence is far

removed from a “push and shove.” According to the U.S. Department of Justice, one-third of these attacks, if reported, would be classified as felony rapes, robberies, or aggravated assaults. The remaining two-thirds would be classified as simple assaults, though up to half of them involved “bodily injury at least as serious as the injury inflicted in 90 percent of all robberies and aggravated assaults.”<sup>6</sup>

### Scope of Battering Problem

In 1990, the U.S. Senate Judiciary Committee began to investigate violence against women. As chairman of the committee, I held hearings and then drafted legislation—the Violence Against Women Act.<sup>7</sup> During the preliminary investigation it became clear to me that this nation has, for decades, operated under a false idea of violence against women. What the public was calling a private affair turns out to be a very public tragedy.

One million women a year seek medical assistance for injuries caused by violence at the hands of a male partner.<sup>8</sup> That is a public health menace, not a private malady. Children in homes with domestic violence are 15 times more likely to be abused or neglected than children in peaceful homes.<sup>9</sup> That is a public tragedy for future generations, not a private failure of communication. We spend \$5 billion to \$10 billion a year on health care, criminal justice, and other social costs of domestic violence.<sup>10</sup> That is a public budget crisis, not a minor shortfall.

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*Sen. Joseph R. Biden (D-Del.) chairs the Judiciary Committee of the United States Senate.*





By March 1993, March 1993

Our false idea of this violence has in turn left us in the dark about some of the most important basic questions about domestic violence. For example, until recently we have had little reliable data on the scope of the problem. Independent estimates range from 2 million to 12 million victims a year, with the most often cited numbers showing that between 3 million and 4 million women are severely battered annually.<sup>11</sup> Official government agencies charged with collecting crime data, like the FBI, do not specifically include domestic violence in their yearly national crime statistics.<sup>12</sup>

To fill this gap, the majority staff of the Senate Judiciary Committee conducted an extensive survey of authorities across the nation. Last October the committee released *Violence Against Women: A Week in the Life of America*,<sup>13</sup> which for the first time provided a national estimate of domestic crimes reported to the police each year. The report included the following findings:

► In 1991 alone, 21,000 domestic crimes against women were reported

each week to the police.

► One-fifth of all the aggravated assaults in the country occurred in the home.

► That year 1.1 million assaults, rapes, and murders were committed in homes and reported to the police. The total for unreported attacks is estimated to be as much as three times this figure.<sup>14</sup>

#### A Week in the Life

Unfortunately, statistics like these do not always speak loudly enough about the human tragedy that they reflect. To help us better understand the problem, the committee collected and included accounts of individual acts of violence that occurred during a single week in September 1992. Compiled from a random survey of rape crisis centers, domestic violence shelters, and other service providers across the country, these accounts revealed the tragic human face of domestic abuse. What emerged was a gruesome portrait of violence—a violence that destroys individual lives, rips apart families, and condemns children

to repeat the violent acts of their parents in an unending chain of harm.

Here are a few of the 200 incidents compiled in the committee's report:

► September 1, 5 p.m., suburban Connecticut—A 26-year-old woman is attacked by her boyfriend of five years. He breaks her right arm with a hammer.

► September 2, 11:17 p.m., rural West Virginia—A woman calls a local hotline because her husband has broken the window of her car and threatened her life. He has been harassing her at work, and she fears losing her job.

► September 3, time unknown, Florida—A 21-year-old woman is beaten in the head by her father with a 3-inch-diameter pipe. He is arrested after neighbors call the police.

► September 4, morning, Kansas—A 39-year-old woman is taken to a shelter. Her ex-husband has custody of their children. When she went to pick up the children for visitation, he took her into the bathroom and raped her. The children were in the house and called the police when they heard her screaming.

► September 5, night, New Hampshire—A 23-year-old woman with two children is held at gunpoint and raped twice by her live-in boyfriend. Her injuries require her to be hospitalized for six days. She is then transferred to a local domestic violence shelter.

► September 6, 9 a.m., a city in Colorado—A 15-year-old girl is hit in the

face and thrown against a wall by her boyfriend; police escort her out of the apartment. The boyfriend is arrested because of outstanding abuse charges by two other women.

► September 7, 2 p.m., New Mexico—A 20-year-old woman, six months pregnant, is beaten and abandoned by her boyfriend of one year.

This sad chronicle represents only a tiny fraction of the violence suffered by U.S. women every week of every year. The committee's report took 20 pages of typewritten text to describe 200 violent incidents, yet it covered less than 1 percent of the violent attacks against women reported to the police in that week alone. If we had included every incident, our time line would have been 2,000 pages long—just for a single week in the life of U.S. women.

What do these stories tell us about domestic violence? As the report put it: "At the most basic level, they tell us that *no one is immune*. Violence happens to young women and old women, to rich women and poor women, to homeless women and working women."<sup>15</sup>

At another level, these stories help to remind us of the ripple effects of violence in the home, which "affects everyday lives, imperils jobs, infects the workplace, ruins leisure time and educational opportunities."<sup>16</sup>

Finally, the stories warn us of a future generational transfer of violence. It is sad but true that in many of these incidents, we found children who saw their mothers raped, children who saw their mothers beaten, children who were forced to call 911. Unless something is done, these child victims of domestic violence may go on to repeat the very same violent patterns they have witnessed.

### The Violence Against Women Act

During the past 20 years, many sincere efforts have been launched to assist victims of crime, particularly victims of rape and domestic violence. Rape laws now focus on the defendant's conduct, not the victim's previous behavior or life-style. Sex crimes units and domestic crimes units have sprouted up in major metropolitan areas. On the federal level, Congress has provided aid, albeit modest, to domestic violence shelters and instituted a fund to help the victims of rape and domestic violence.

Unfortunately, the promise of these efforts has not always been realized. Despite our growing awareness of the depth and extent of violence against women, our society's response remains inadequate. It is still easier to convict a car thief than a rapist or a spouse abuser. It is possible to find cities that spend more on their zoos than the entire state spends on helping the victims of domestic violence.<sup>17</sup> Indeed, the United States has three times as many shelters to care for unwanted pets than it has shelters



to harbor battered women.<sup>18</sup>

To help respond to these needs, I have re-introduced the Violence Against Women Act.<sup>19</sup> The purpose of the legislation is not only to implement important legal reforms but also to attack the subtle prejudices that have helped mask the problem from public view. National leadership on this issue is sorely needed. To put it in the words of one witness who testified at hearings on the bill, "We have to make a . . . clear[er], a louder statement that this is criminal, that in this country this is not accepted, nor will it be tolerated."<sup>20</sup>

The bill includes a number of important reforms targeting *all* crimes against women, including rapes and beatings. With respect to domestic violence, specifically, the bill emphasizes both safety for survivors and accountability for abusers. The act—

- ▶ authorizes \$300 million in new funding to provide training for police, prosecutors, and victim advocates; to create special police and prosecution units devoted to crimes against women (including rape and domestic violence); and to increase computerized communications between criminal and family law agencies and courts;

- ▶ creates the first federal penalties for crime committed by abusers who cross state lines to continue their abuse;

- ▶ requires that protection orders issued by the courts of one state be accorded "full faith and credit" by other states;

- ▶ provides significant incentives to encourage states to treat domestic violence as a serious crime;

- ▶ authorizes the U.S. Department of Education to disseminate model programs to educate young people about domestic violence, with programs for primary, middle, and secondary schools;

- ▶ triples existing federal funding for battered women's shelters; and

- ▶ creates training programs for state and federal judges to raise awareness and increase sensitivity about rape, sexual assault, and domestic violence.

Finally, and perhaps most important, the bill recognizes that violence against women raises issues of equality as well as issues of safety and accountability. Every woman has a right to be free from violent attacks motivated solely by the fact that she is a woman. The Violence Against Women Act could help to guarantee that right. It recognizes, for the first time, a civil rights remedy for vic-

tims of crimes "motivated by gender."

Long ago we recognized that hate beatings of African-Americans or Asian-Americans violate their right to be free and equal. We should guarantee the same protection for victims who are assaulted only because they are women. Whether an attack is motivated by racial bias or ethnic bias or gender bias, the results are the same. The violence not only wounds physically, it degrades and terrorizes, instilling fear and inhibiting the lives of all those similarly situated.

As Illinois Attorney General Roland Burris testified before the Senate Judiciary Committee: "Until women, as a class, have the same protection offered others who are the object of irrational hate-motivated abuse and assault, we as a society should be humiliated and ashamed."<sup>21</sup>

I realize that this legislation will not eradicate violence against women, but I believe that it is a step in the right direction—in the direction of changing this nation's false idea that domestic violence is second-class crime. We like to believe that home is a place of safety, tranquility, and comfort, but for millions of women, it is a place of danger and fear. Until we recognize that fact and

brand these attacks as brutal and wrong, we can never hope to change the course of domestic violence. □

## Notes

1. Nancy K. Sugg & Thomas Inui, *Primary Care Physicians Response to Domestic Violence*, 267 JAMA 3157 (1992) (adopting the 3 to 4 million estimate); *Women and Violence: Hearings Before the Senate Comm. on the Judiciary on Legislation to Reduce the Growing Problem of Violent Crime Against Women*, 101st Cong., 2d Sess. 111 (1990) (hereafter *Women and Violence*) (testimony of Dr. Angela Browne) (estimating 4 million women are severely beaten each year).
2. Surgeon General Antonia Novello has echoed former Surgeon General C. Everett Koop's concerns. See *From the Surgeon General*, *US Public Health Service*, 267 JAMA 3132 (1992).
3. Sir William Blackstone, *Commentaries on the Laws of England*, quoted in *WOMEN, THE FAMILY, AND FREEDOM: THE DEBATE IN DOCUMENTS 34* (Susan G. Bell & Karen M. Offen eds., 1983).
4. Karen Baker et al., joint project, D.C. Coalition Against Domestic Violence & Women's Law & Public Policy Fellowship Prog. at Georgetown U. Law Center, Report on District of Columbia Police Response to Domestic Violence, Nov. 3, 1989, at 44 (on file with Sen. Comm. on Judiciary).
5. U.S. DEPT OF JUSTICE, FED. BUREAU OF INVESTIGATION, CRIME IN THE U.S. 1991, UNIFORM CRIME REPORTS 19 (1992).
6. NATIONAL INST. OF JUSTICE, U.S. DEPT OF JUSTICE, CIVIL PROTECTION ORDERS: LEGISLATION, CURRENT COURT PRACTICE, AND ENFORCEMENT 4 (1990).

7. S. 2754, 101st Cong., 2d Sess. (1990); reintroduced as S.15, 102d Cong., 1st Sess. (1991); now pending as S.11, 103d Cong., 1st Sess. (1993).
8. Congressional Caucus for Women's Issues, *Violence Against Women 5* (Oct. 1992 fact sheet).
9. National Woman Abuse Prevention Project, *Effects of Domestic Violence on Children* (undated fact sheet) (on file with Sen. Comm. on Judiciary).
10. See Harris Meyer, *The Billion-Dollar Epidemic*, AM. MED. NEWS, Jan. 6, 1992, at 7.
11. See H.J. Cummins, *Domestic Violence Crosses Over into the Workplace*, NEWSDAY, July 12, 1992, at 94 (U.S. Centers for Disease Control and Prevention in Atlanta estimate that 2 million to 12 million women are battered, depending on definition of "battering" used); MILDRED D. PAGELOW, *FAMILY VIOLENCE 45-46* (1984) (adopting the 12 million estimate); see also Sugg & Inui, *supra* note 1, at 3157; *Women and Violence*, *supra* note 1.
12. CRIME IN THE U.S. 1991, *supra* note 5.
13. SENATE COMM. ON JUDICIARY, *VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA*, S. DOC. NO. 118, 102D CONG., 2D SESS. (Oct. 1992).
14. *Id.* at 4.
15. *Id.* at 5.
16. *Id.* at 6.
17. See Nancy Gibbs, *'Til Death Do Us Part*, TIME, Jan. 18, 1993, at 42.
18. *Women and Violence*, *supra* note 1, at 128 (testimony of Sarah Buell).

19. S.11, *supra* note 7.

20. *Women and Violence*, *supra* note 1, at 171 (testimony of Dr. Angela Browne).

21. *Violence Against Women: Victims of the System: Hearings on S.15 Before the Sen. Comm. of the Judiciary*, 102d Cong., 1st Sess. 76 (1991) (testimony of Ill. Att'y Gen. Roland Burris).





LAW ENFORCEMENT AND DOMESTIC VIOLENCE:  
COMMONLY ASKED QUESTIONS<sup>1/</sup>

**I. Interjurisdictional Arrest**

- 1. A 209A order is in effect in Town A. The husband violates the order by assaulting the wife in Town A. Husband flees to Town B. Do the Town B police have the authority to arrest the husband upon notice of the assault by Town A police?**

Town B police may arrest the husband because the mandatory arrest provision of Chapter 209A Section (6)(7) requires an arrest whenever a police officer has probable cause to believe that the defendant has violated a restraining order. This means that an officer of a city or town must arrest anyone located within his or her jurisdiction who the officer has probable cause to believe has violated a restraining order under 209A or its related provisions.

It makes no difference in the determination of probable cause that the offense may have been committed in another city or town; if a police officer concludes that there is probable cause that a restraining order was violated anywhere in the Commonwealth, the officer is obligated, within his or her jurisdiction, to make the arrest.

As in any other situation, police officers may rely on information provided to them by officers in another jurisdiction to establish probable cause.

- 2. A 209A order is in effect in Town X. The boyfriend calls from Town Y and threatens the girlfriend who is in Town X. Do the Town Y Police have the power to arrest the boyfriend upon notification by Town X?**

If there is a no-contact order in effect against the boyfriend, then the threatening phone call is a violation of the order, and the mandatory arrest provision of Chapter 209A

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<sup>1/</sup>The Attorney General's Office wishes to acknowledge the contribution of Cathy Sullivan, Assistant District Attorney, Middlesex County, in the preparation of Sections I - III.



is triggered. Therefore, based upon the probable cause reasoning contained in the answer to question #1, once the Town Y police are notified that the order has been violated, Town Y officers are required to arrest the boyfriend.

## **II. PROBABLE CAUSE**

1. How long does the "mandatory arrest" power last? Is there any problem about the "staleness" of probable cause?

As long as the probable cause does not dissipate, the right to arrest continues to exist. In 209A cases, once an officer learns that an order has been violated, the probable cause to arrest has been established. Unless new facts come to light indicating that no restraining order was in effect against the defendant at the time of the reported offense, or that the report of abuse was unfounded, probable cause, once established, continues to exist.

## **III. WARRANTS**

1. A 209A order is in effect in Town Q. The husband assaults the wife in her home in Town Q. Husband flees to his mother's home in Town Q. Can the police enter the mother's home to arrest the husband?

If the mother refuses to allow the police to enter her home, the police cannot enter the home, absent exigent circumstances, without a search warrant. Therefore, in this situation, the police must obtain both a search warrant to gain entry to the home and an arrest warrant to apprehend the defendant.

If the husband had fled to his own apartment in Town Q, and refused to answer the door, the police must again, absent exigent circumstances, first obtain an arrest warrant to enter his home and take him into custody.

## **IV. SERVICE OF ORDERS**

1. A woman obtains an emergency 209A order against her husband. The police attempt in-hand service twice, and then leave the order with the husband's sister, with whom he is staying. For the purposes of the ten-day hearing, is this sufficient notice to the husband under Chapter 209A?

Yes, the 1990 Amendments to Chapter 209A expressly deleted the in-hand service requirement for service of 209A orders. See, Chapter 209A, Section (7).

2. Regarding multi-jurisdictional problems, when a victim obtains an Emergency 209A from an on-call Justice, can the on-call Justice also issue a complaint and arrest warrant for the perpetrator?

An on-call Justice cannot issue a complaint and arrest warrant over the phone. For an arrest warrant to be issued, a sworn affidavit must be presented in person to the on-call judge.

#### **V. MANDATORY ARREST**

1. If an alleged abuser is not served with a temporary restraining order before he appears at the victim's door, can you arrest or must you first serve the order and tell him to leave and not come back?

If the perpetrator is at the victim's home, and the only alleged violation is of the vacate or no-contact order, then the police must serve the order and warn the perpetrator that if he returns to the premises, he will be arrested. Unless the police have previously served the defendant with the order, they cannot arrest him for a violation of the vacate order.

However, if the situation includes any circumstances which would give rise to the "arrest as the preferred response" provisions of Chapter 209A, Section 6(7), then the police could arrest the perpetrator. Under Section 6(7), arrest is the preferred response when the officer has probable cause to believe that the individual has committed: (a) a felony; (b) a misdemeanor involving abuse as defined in Section One of Chapter 209A; or (c) an assault and battery in violation of Chapter 265, Section 13A.

2. Since the police have the right to arrest where probable cause exists under Chapter 209A, Section 6, what is the proper response in the situation where the police arrive on the scene and the abuser has fled, and the facts indicate either a mandatory arrest (violation of an order) or a preferred arrest response (probable cause to believe that abuse has occurred)? Can the officer go to court and get a complaint and warrant issued? What if the clerk refuses to issue a warrant?



A major area of confusion concerning 209A has been the felony/misdemeanor distinctions in due process owed to the defendant. An individual accused of a misdemeanor must receive notice and has the right to be heard before a complaint is issued. Specifically, under Chapter 218, Section 35A, before process (complaint) issues, the District Court must give the accused person, written notice of the application and an opportunity to be heard in opposition, unless exigent circumstances are present. The exigent circumstances that remove the need for written notice involve an imminent threat of bodily injury, the commission of a crime or of flight from the Commonwealth by the accused person.

Obviously, given the nature of the crimes committed in violation of Chapter 209A, there is an inherent "threat of bodily injury." In addition, if the abuser has violated a restraining order, he has already committed a crime, and would more than satisfy the "imminent threat ... of the commission of a crime" component of Chapter 218, Section 35A. Finally, in the above scenario, the abuser has already fled the scene and in light of past experiences with domestic violence cases, there is always the likelihood that he will flee - at least temporarily - to another state to avoid prosecution. Therefore, in this scenario, it would be reasonable to advise the clerk that the combination of the arrest authority under Chapter 209A, Section 6 and the existence of "exigent circumstances" pursuant to Chapter 218, Section 35A would allow the issuance of a complaint in the absence of either notice to the accused and/or a sworn complaint by the victim.

In addition, and probably more importantly, the authority to arrest for violation of a restraining order must be exercised, i.e., mandatory arrest, and is itself, an exception to the warrant requirement.

3. Is an abuser's failure to surrender the keys to the premises a violation of the vacate order and therefore subject to mandatory arrest?

Under the 1990 Amendments, Chapter 209A, Section 6(7) explicitly requires mandatory arrest when a temporary or permanent vacate, restraining, or no-contact order has been violated. Furthermore, chapter 209A, Section 1 was amended to include the definition of "vacate order". In pertinent part, the statutory definition of "vacate order" includes:

leave and remain away from the premises;

surrendering forthwith any keys to said premises to the plaintiff; and



shall not shut off or cause to be shut off any utilities or mail delivery to the plaintiff.

Therefore, although it would appear that the traditional recourse of contempt would be more appropriate in these purely civil matters, the language in Chapter 209A clearly requires mandatory arrest for the violation of a vacate order, and since "vacate order" includes the surrender of keys, any refusal to do so is subject to the mandatory arrest provision of Section 6(7). The legislative intent behind the mandatory arrest provision clearly states that a violation of an order will result in arrest, therefore, the inclusion of surrendering keys, and not interfering with utilities or mail delivery in the statutory definition of a vacate order must also be enforced as written.

## **VI. LIABILITY ISSUES**

### **1. Are officers protected from civil suits under 42 U.S.C. 1983 brought by domestic violence victims?**

No, under both the Federal and State Civil Rights Acts, a police officer can be held personally liable. A plaintiff bringing suit against a police officer generally relies on one of three sources of law: the Massachusetts Torts Claims Act, G.L. Chapter 258, Section 2; the Federal Civil Rights Act, 42 U.S.C. 1983; and the Massachusetts Civil Rights Act, G.L. Chapter 12, Section 11H and 11I.

Under the Mass. Torts Claims Act, "public officials shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment." The municipality, as a public employer, is liable for any judgment rendered, and not the individual officer. Since liability under the Mass. Torts claims Act is limited to \$100,000, most plaintiffs choose to bring suit under the Federal and State Civil Rights Acts, which do not limit the amount of damages available to a plaintiff.

Under both the Federal and State Civil Rights Acts, in addition to the personal liability of the officer, the municipality may also be held liable if the plaintiff proves that as a result of "policy or custom," the town was responsible for the plaintiff's injuries. Monell v. Department of Social Services, 436 U.S. 658 (1978).

(Note: Under Chapter 209A, Section 6(7), "no law officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a domestic violence incident for an arrest based on probable cause ...")

## **VII. MISCELLANEOUS ISSUES**

1. I received a call from a woman whose daughter (who is over age 18) is being beaten by her boyfriend. The mother is not a victim of abuse by the boyfriend, but the daughter won't file a complaint.

The key consideration in this situation is whether the police have probable cause to arrest the boyfriend. Probable cause is unlikely to exist without the victim's (daughter's) statement unless the mother is an eyewitness to the abuse. The secondary problem here is that even if the police can establish probable cause to arrest the boyfriend, if the daughter is unwilling to seek a complaint or to prosecute, then there is really nothing more that either the mother or the police can do.

2. What if a parent and child are fighting and the parent strikes the child in front of a police officer?

The best approach to such a situation is to use common sense. Some factors that responding officers may consider when deciding whether to institute the preferred arrest policy are: (a) Is the action by the parent clearly abusive or is the action disciplinary?; (b) Is there a pattern or prior history of abusive behavior in this relationship?

An alternative or additional response would be to file a 51A for child abuse to have the potentially abusive situation investigated.

3. How long must an officer stay at the scene of a domestic violence call, particularly if there is a possibility of the batterer returning?

Chapter 209A, Section 6(1) mandates that officers responding to domestic violence calls "remain on the scene of where said abuse occurred as long as the officer has reason to believe that at least one of the parties involved would be in immediate physical danger without the presence of a law officer. This shall include, but not be limited to, remaining in the dwelling for a reasonable period of time."

The Police Guidelines, Section 2.0 reiterate the provision set forth in Chapter 209A, Section 6(1), and do not add any further instructions.

Therefore, the most important consideration is reasonableness in light of the specific facts of the situation. If there is an established history of violence and a genuine fear for the safety of the victim, it may be more



reasonable to assist the victim in finding a "safe place", either at a relative's or friend's home or a shelter rather than requiring a police officer to remain on the scene for any extended period of time. (Chapter 209A, Section 6(3); Police Guidelines 2.0, Section C.)

4. Our Department has many restraining orders on file which were issued out of Probate Court and contain no expiration dates. Many are several years old, but include recent correspondence from attorneys stating that the orders are still valid. Are these restraining orders issued out of Probate Court still in effect?

Unlike restraining orders issued under 209A, which expire after one year, orders issued under Chapter 209, Section 34B by the Probate Court as part of a divorce decree remain in effect until a judgment for divorce has been entered or a permanent restraining order has been issued as part of the divorce proceeding. Any divorce judgment will vacate any existing temporary orders and any final divorce judgment which contains a restraining order is fully enforceable.

5. The plaintiff/mother went to District Court in Town A on Tuesday, where she applied for and received a 209A order against her own mother to surrender custody of her (the plaintiff's) minor children.

The plaintiff went to the Town A Police on Thursday to have them execute the order. When the police arrived at the grandmother's house, she presented them with an order from the Probate Court in Town B that was issued on Wednesday. This order awarded the grandmother custody of the minor children.

In light of these inconsistent orders, does the Probate Court order awarding the grandmother custody supercede the 209A order?

- a. Where 208 and 209A Orders co-exist, which takes precedence?

Any Probate Court order affecting custody or support which is prior to or subsequent to the issuance of a 209A order, takes precedence over the custody or support provisions of the 209A order.

Where the Probate Court orders restraining, no-contact, or vacate orders in domestic violence cases, neither would appear to take precedence over the other.

The best approach here would be to advise the plaintiff to go to the Probate Court and explain the situation to the judge who issued the custody order.

**b. What about a Probate Court ex-parte emergency restraining order?**

Since it is an ex parte order, it would not automatically supercede a 209A temporary restraining order from a District Court, which is also an ex parte order. Again, the parties should be instructed to return to the court for clarification of the orders.

**c. What about a restraining order issued by the Probate Court where there was a full hearing, with notice to all parties and both parties appeared in court?**

Here, the order by the Probate Court should supercede the District Court ex-parte order since both parties were present and were able to present their respective positions to the Probate Court judge. Similarly, if the District Court issues a permanent restraining order after a ten-day hearing where there was notice and an opportunity to be heard for both parties, the District Court order should take precedence over an ex-parte Probate Court order.

**d. What about contradictory restraining orders issued after full hearing in both courts?**

The problem of inconsistent final or permanent restraining orders is really a court problem. Unfortunately, such orders do exist in domestic violence cases and the police have no alternative but to enforce both orders while advising the parties to straighten it out in court.

WPP(38)



## **What is Battering?**





## WHAT IS BATTERING?

Battering is a pattern of coercive control founded in violence. In our society, sexism teaches men that they have the right to be and ought to be dominant over women. Whether the batterer is male or female, his or her intent is the same: to feel superior and dominant in the relationship while making the partner feel subordinate, incompetent, worthless, and anxious.<sup>2</sup> Batterers will often explain their abuse with the cliché: "She needs to be taught who is the boss."

Battering can consist of:

- physical abuse, including punching, slapping, kicking, shoving, choking;
- verbal and emotional forms of assault and control such as intimidation, coercion, threats, or degradation;
- economic forms of control such as withholding or denying access to money or other basic resources; sabotaging employment, housing; or educational opportunities; forcing the partner to live beyond her means or misusing the partner's credit cards;
- sexual assault or coercion;
- social isolation by denying communication with friends and relatives or making communication so difficult that the woman chooses to avoid it; prohibiting access to the telephone or transportation; denying access to needed health care;
- failure to comply with immigration requirements, thereby making the immigrant spouse unable to work and vulnerable to deportation and loss of child custody.

Nonphysical forms of abuse can sometimes be more damaging than physical violence. Many women who have been battered say that while their physical injuries have healed, their emotional scars and diminished self-image remain.

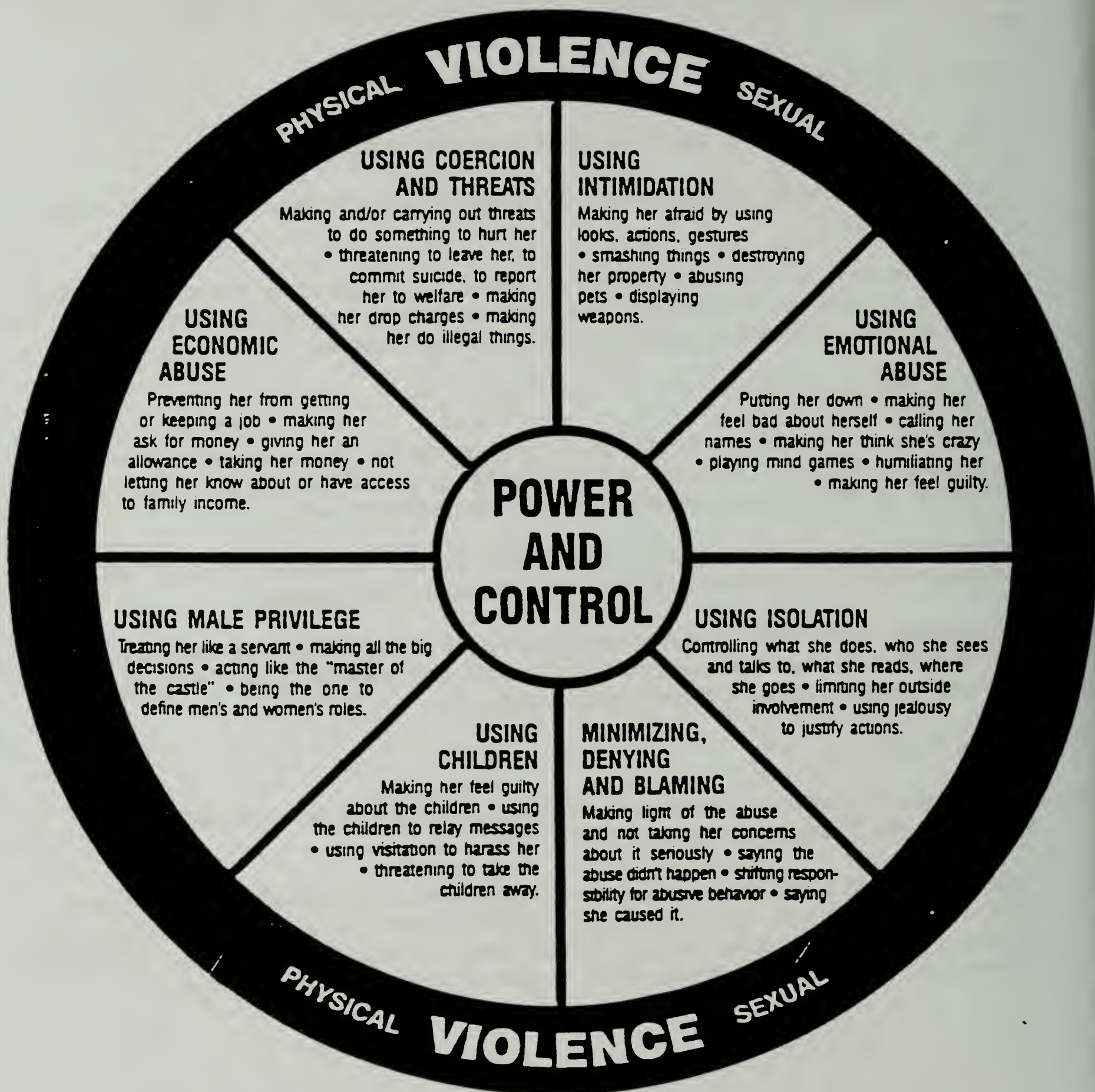
### Sexual Abuse

Sexual abuse is often a component of battering. The following definitions are from the Massachusetts Coalition of Rape Crisis Services:

**Sexual assault** is any kind of sexual contact that is forced or coerced. Obscene phone calls, indecent exposure, unwanted touching, sexual harassment, and pressure to have sexual contact are all forms of sexual assault. Sexual assault includes rape and incest. Anyone who experiences any forced or coerced sexual contact has been sexually assaulted.

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<sup>2</sup> Adapted from Susan Schechter and Lisa Gary, "Understanding and Empowering Battered Women," in *Abuse and Victimization Across the Life Span*, M.B. Straus, ed. (Baltimore: Johns Hopkins University Press), 1988.



DOMESTIC ABUSE INTERVENTION PROJECT

208 West Fourth Street  
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## Myths About Woman Abuse

Chris Butler

**MYTH #1:** "Battering" overstates the case. Few women get beaten, though maybe some get slapped around a little.

An estimated two to four million women are beaten in their homes every year in this country. In Massachusetts alone, the courts grant over 30,000 abuse prevention orders each year to women seeking

protection in the home. Although the first incident of violence may not be severe, once battering begins it tends to escalate in severity and frequency, sometimes leading to permanent injury or death.

What may begin as an occasional slap or shove will turn into a push down the stairs, a punch to the face, or a kick in the stomach. On average, four women are murdered every day by their husband or boyfriend in the United States. A Kansas Police Department study found that in 85% of domestic homicide cases, the police were summoned at least once before the killing occurred and in 50% of the cases, they had been called five or more times before the killing.

Battering brutally violates a woman's rights over her body, her mind, and ultimately her life. Battering is not just acts of physical violence. It involves a system of emotional and social control which batterers impose on a woman in an effort to maintain power and dominance. The violence is preceded by emotional abuse and humiliation, as the batterer tries to rob the woman of her sense of self worth. The abuser typically is extremely jealous and attempts to isolate the woman from friends and family. The batterer denies his acts and minimizes the violence, turning any discussion of his violence around to focus on blaming the victim.

**MYTH #2:** Battering is a family matter.

No act which can leave a

*I got pregnant when I was seventeen. I figured I'd get married. He battered me from the beginning, from before we were married. He threw irons at me while I was pregnant. I almost had a miscarriage when he threw me down a flight of stairs.*

*A minister who had his Ph.D. from BU in theology was counseling us. He was the minister who married us. He tried to get me to leave because he had fallen in love with me. I had a relationship with him. He battered me also—he tried to kill me, he tried to drive me off the Mystic River Bridge and did all this crazy shit to me. So I was kissing him one day and I picked up a rock and whammo—I knocked him out cold and split. That was the only way I could get away from him. I had just turned 18.*

woman permanently injured physically or mentally, or result in her death is a "family matter." Assault is assault, rape is rape, murder is murder, regardless of the relationship between the people. Arguing in such cases that the "privacy" of the family must be maintained can mean injury, death, or virtual imprisonment to many battered women. The same attitudes perpetuate the sexual and physical abuse of children.

There is a general reluctance to interfere in family relationships. Women have been encouraged to remain in violent homes in order to preserve the family unit. Or, alternately, battered women are viewed as defective for having "willingly put up with it," and treated almost as criminals themselves. In either case, the things which we know can help a woman—providing her with legal protection and/or a safe place to stay, giving her the support of other battered women, and changing the criminal justice system to hold the batterer accountable—are not provided and society looks the other way. It is the isolation and denial enforced by the abuser, combined with the community's isolation, denial, and neglect which trap a woman.

Shelter workers and other advocates have begun educating the law enforcement community and social service agencies about battering. However, this work is just beginning; many police officers, judges and therapists still blame the victim. The law enforcement system is still reluctant to

treat battering as seriously as any other violent crime. Lawsuits such as the million dollar *Thurman v. Torrington* case in Connecticut have convinced some police departments to treat battering more seriously for fear of being sued for negligence. Yet even in states with strong abuse prevention laws many police officers and judges continue to discount the criminal nature of the abuse. Until we stop separating violence within families from other violent crimes, we will force thousands of women to stay in an environment that may eventually kill them.

### MYTH #3: Battering only happens in "problem" families.

Battering is too widespread to be considered the problem of a few "sick" families; it is the problem of a society which presents violence as a normal part of intimate relationships.

The concept of the "problem" or "dysfunctional" family is suspect since it presupposes the existence of non-problem or "normal" families. The image of the stable, happy family masks the reality of the large number of people whose family lives are a daily ordeal, ignores the rising number of people who do not live within nuclear families, and ignores the statistics on woman and child abuse. By encouraging male dominance and reinforcing stereotyped sex roles, our whole society and not just individuals or individual families is responsible for the violence.

The myth that only problem



families experience violence also encourages social service workers, police, and court personnel to look for "reasons" and family "problems" to explain away the violence. The notion that alcoholics or drug abusers batter because of their addictions is contradicted by the evidence that the battering does not always stop when the abuser gets help for his substance abuse. For years women have been encouraged to seek professional help for their partner's alcoholism, their failure to make a successful marriage, or their "paranoia" about being abused. More and more women are now rejecting such advice and recognizing that the abuser is the problem.

**MYTH #4:** Battering occurs only within low income or working class families, or within particular racial or ethnic groups.

Studies and our direct experience show that batterers and battered women are of every racial, social, ethnic, and economic background. Women have been battered by doctors, lawyers, dock workers, judges, school teachers, ministers, and cab drivers. Statistics dealing with woman abuse have been gathered primarily through public agencies such as city hospitals and social service agencies, and therefore sometimes erroneously suggest that only certain kinds of women are battered by certain kinds of men.

Since middle class and upper class women often have other options open to them, such as staying in a hotel, they are less

likely to seek assistance from public agencies, or from emergency shelters. Many middle class women also are afraid of damaging a successful husband's career, and are pressured by family, friends and others to keep up appearances. Others may have greater access to work and financial independence. Of the middle class women who do seek assistance from battered women's service groups, many have spent years working in the home and do not have marketable skills; they suddenly find themselves without any means of support except public assistance.

**MYTH #5:** Battered women constitute a particular and easily definable group of women.

The term "battered women" gives rise to the stereotype of a passive woman, between 20 and 35 years old, who is unemployed, has 2 or more children, and lives with her husband who is alcoholic. The facts, however, indicate that "the" battered woman is us—any of us. Battered women are as diverse as women are.

A battered woman may be elderly, teenaged, or middle aged. She may represent an upper, middle, or working class background and any race or culture. She may be a homemaker, or work as an administrator, teacher, prostitute, organizer, shelter worker, student or factory worker. She may have been in the relationship two weeks or twenty years. She fits no easily definable pattern or stereotype.

*I've learned also that the doctors, the police, the clergy and friends will excuse my husband for distorting my face but won't forgive me for looking bruised and broken.*



*I called the police one time. They not only didn't respond to the call, they called several hours later to ask if things had "settled down."*

Furthermore, just as there are diverse kinds of women who are battered, there are many different kinds of relationships in which abuse occurs. The term "wife abuse," although widely used, distorts reality. Women are battered not only by husbands, but also in dating relationships, or by lovers, relatives, and neighbors. Prostitutes are often battered by their pimps and johns, and the very nature of prostitution is a system of abuse of women and children. Some lesbians are subject to homophobic attacks by former husbands or family members and others are beaten by their lovers.

**MYTH #6:** She asked for it or she wanted it.

Of all the myths about battering this is probably the most degrading to women. Yet many battered women have been accused by abusers and others of asking for the violence. Anyone who asks "what did you do to provoke the violence?" reinforces this message. Many women stay with a violent partner for years thinking that the battering is their fault and they'll eventually find a way to make it stop.

Similar to the provocation theory is the suggestion that women like to be abused. This theory blames the woman for the violence rather than holding the abuser responsible. The fact that the woman is trying to avoid being hurt is ignored. Because of the prevalence of violence against women and children in this society, many women have been

taught to expect violence in their relationships. And periods of being showered with affection and attention make it hard for the woman to leave. It's not the violence a battered woman wants to preserve—it's the relationship.

**MYTH #7:** It can't really be that bad or she wouldn't stay.

Many women do leave. Every year in Massachusetts, 5000 women and children flee to shelters for battered women. However, some women stay because they have been threatened with worse harm if they leave or because they are economically dependent on their partners. An interview with eighty-one battered women in Duluth, Minnesota, found that 48% of those employed reported that they lost work time because of physical abuse, 43% were harassed at work, and 18% lost their jobs because of the abuse; 21% said that they were discouraged from going to school, and 14% were forbidden by the batterer from returning to school. The social and economic controls which a batterer places on a woman and the process of trying to tear down her spirit can immobilize her.

**MYTH #8:** Battering occurs because both partners come from violent families.

Many professionals and scholars explain battering as the result of a "cycle of violence," in which boys who are exposed to violence grow up to be batterers; girls, to be victims. What this theory fails to

*No one has to "provoke" a wife beater. He'll hit when he's ready and for whatever reason he wishes. I may be his excuse but I have never been the reason.*

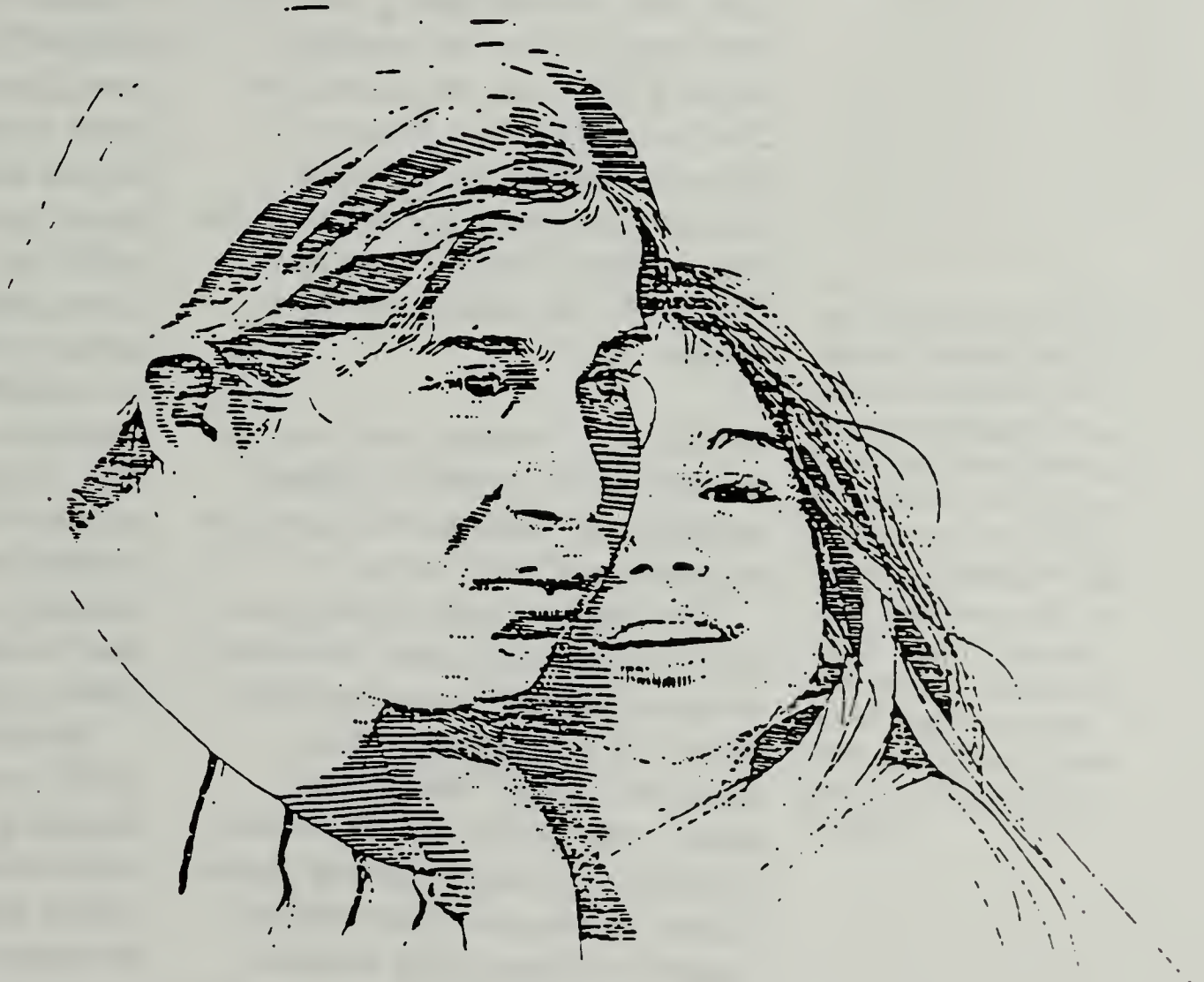


address is the large number of batterers who come from nonviolent families and battered women who come from nonviolent families but become trapped in violent relationships. There is no question that observing violence towards their mother has a tremendous impact on children. But this does not mean that every child of a battered woman will batter or be battered as an adult.

Another facet of the cycle of violence theory is the suggestion that battered women batter their children. Because of this common belief, some battered women are afraid to mention their own abuse to social workers for fear of losing custody of their children. Battered women are no more likely to abuse their children than women who

have not been battered.

While the cycle of violence theory too rigidly stereotypes children of batterers, and puts blame on the woman, there is an important point to be understood about the role of victimization in a person's life. Being victimized by sexual abuse or beatings as a child or sexually exploited as an adolescent can teach a young woman bitter lessons about who she is and what she can expect from the world. People are often confused and disgusted by a woman who goes from one bad situation to the next and they blame her for the "choices" she makes. But often we can see that the lessons she learned as a child have set her up for later violence. For instance, one woman wrote about the



impact of having been raped repeatedly by her birth father as a very young child and sexually abused by a neighbor when she was seven:

*I couldn't seem to heal. I kept being told I was a woman who loves too much, that I am a masochist, that I'm addicted to abusers. And I finally found the battered women's program in Des Moines, Iowa, and they told me differently. They told me I didn't seek out an abuser and that I'm not co-dependent. And instead they said I have one problem: I married a goddamned abuser.*

*He encouraged me to drink, to take drugs, to sleep with anyone who wanted me. He was constantly bragging that he was 'training' me...Eventually he started paying me, ten or twenty dollars here and there to assuage his guilt.*

*She writes of her experience as a twelve-year-old girl:*

*I don't remember how many men there were in the four years that followed. Most of them older, most of them vicious. All of them afraid for themselves that I might 'tell.' Some were more violent than others. Some were more guilty than others. Most of them were respected family men...The only thing that kept me sane was knowing that I was not the only one. One friend of mine, at fifteen years old, was sleeping with a married minister. One friend's father broke her arm. Another's brother raped her. 'That's life,' we used to say. 'Have another beer.'*

**MYTH #9: "Women who love too much" are the problem. These women get "addicted" to abusive partners and can't leave.**

This myth is particularly powerful because it appeals to women who are starting to see their relationships as unsatisfying and abusive. Though the abuser is solely responsible for the abusive behavior, this myth instead places blame on women. The attempts made by women with abusive partners to save their relationships

and maintain a loving home environment for their children are not symptoms of an addictive personality. These reactions are normal and healthy. In fact, some of the supposed symptoms of addiction like "trying hard to be good" are actually survival techniques for the battered woman. Often one of the goals of the batterer is to belittle the woman's attempts to care for him and her children. The "women who love too much" theory compounds the battered woman's feelings of inadequacy and guilt by reinforcing the feeling that she is the problem.

**MYTH #10: Lesbians don't get battered.**

Lesbian battering occurs when a woman uses violent and coercive behavior to control her partner or lover. She may use the additional threat of exposing the abused partner's lesbianism—which could cause her to lose her job, her home, her children, or the support of her family. It is a myth that certain groups of lesbians batter and others do not. Whether a woman is a "bar dyke," identifies with "butch" or "femme" roles, considers herself a "feminist," is closeted or not, she is capable of battering or being battered. Lesbian battering crosses the lines of class, race, and culture.

Battered lesbians are often afraid to speak out about the battering. The fear of splitting the community keeps the battering a secret, and this allows the violence to continue. The fear of giving homophobic people fuel for their

*At my job interview at the battered women's shelter they asked if I had any personal experience with battering and I said no. It wasn't until I'd been on the job for a few months that I realized the answer was really yes. Even though I'd been beaten and abused, as a lesbian I just never equated the word "battered woman" with what I was going through.*



nated or lesbians and gays keeps survivors of lesbian battering silent. The lesbian community as well as the battered women's movement needs to continue raising the issue of lesbian battering, validating the experiences of battered lesbians, and holding the batterers accountable.

**MYTH #11:** Just as many men as women are battered. Battered husbands just don't come forward as often.

The vast majority of battering occurs in heterosexual couples, with the man battering the woman. The Bureau of Justice Statistics estimates that 95% of serious domestic assaults are committed by the male. The fact that much of the literature goes to great lengths to use gender neutral terms like "domestic violence," "battering couple," and "spouse abuse" is profoundly misleading. Battering is integrally connected to

sexism and strongly rooted in our patriarchal history.

**MYTH #12:** Batterers just have a problem expressing anger. They need counseling.

One of the most common, and we believe mistaken, approaches to getting batterers to stop their abuse is to assume that they need to learn how to control their anger and solve disputes nonviolently. We believe this is a mistaken focus because batterers often can manage quite adequately not to beat their boss when they are angry or to terrorize their friends. The central focus of programs for abusers must be on challenging their belief that they have the right to control their wives and girlfriends. Battering, far from being an uncontrolled act, is imposed specifically to maintain the batterer's control over his or her partner.

*Batterers are so wounded in denial. They'll say I didn't really hit her hard, or she made me do it, or was the liquor talking, or things'll get better when the pressure's off at work or when I get a job. The list is endless. The ironic thing is that the sociologists and the media collude in the denial because they're always talking about "Unemployment and Domestic Violence" or "Alcohol or Spouse Abuse."*





## CHAPTER IV:

### *Effective Intervention with Battered Women*

#### QUESTIONS TO HELP YOU IDENTIFY BATTERED WOMEN

1. Ask yourself what is making you think she is battered? (Is it what she says, her injuries, her or her partner's behavior?)

She may say: "I'm afraid to go home."

"Things aren't going so well at home."

"My husband has been upset lately."

"We've been fighting a lot."

2. Build trust with her by helping her feel safe and comfortable. If her partner is with her, take her to a private room where he cannot see or hear her.

3. Then, ask questions about what you have noticed.

- a. If she is injured:

"I see you have (injury). Did someone hurt you?"

"I noticed your (injury). Did someone hurt you?"

"I have seen other women who have (injury) and they have been hurt by their partners. I wonder if this is happening to you?"

- b. If she seems withdrawn, sad, anxious, frightened, or is crying. Or if she says something that may indicate battering:

"What are the tears about?"

"What's going on that you seem (mood)?"

"You seem (mood). I wonder what's going on."

"You said (what she said). I wonder if your partner hurts you."

- c. If her partner's behavior or mood seems angry, jealous, controlling, or threatening:

"I noticed your partner acting (behavior). I wonder if he ever hits you."

"Your husband seems (mood). Has he ever hurt you?"

Once she identifies herself as being abused by her partner, you can go on to discuss the situation. Remember: It is very difficult for her to acknowledge the abuse. She may even say she is not a battered woman. Don't argue over the label, look at behaviors with her. You may be the first person she has talked to about the abuse.

The purpose of intervention with a battered woman is to help her reclaim power in her life and to encourage her to act for her own well-being and safety.

The goals of intervention with battered women are to:

1. Validate her experiences
2. Explore her options
3. Advocate for her safety
4. Build on her strengths
5. Respect her right to make her own decisions

*Providing Effective Support*

1. Allow her to tell her story. Let her know you believe her and want to listen to her. Use listening skills.
2. Allow her to express her feelings. She has a right to be angry, scared, etc. This may be the first time she is feeling safe enough to express anger over her victimization. Show empathy.
3. Express your concern for her safety and the safety of her children. She often denies that abuse occurs or denies the level of danger to herself or her children. She may be in extreme danger from the abuser. Help her explore how she might be safe.
4. Let her know that help is available. Keep information at hand to share with her about helplines, shelters, counseling and other resources.
5. Reinforce the idea that nobody deserves to be beaten. Remind her that she is not the cause of the beatings. She is his excuse. She may be responsible for deciding to stay in the relationship, but not for the beatings. Changing her behavior in the relationship will not stop his violence.
6. Realize that she may be embarrassed and humiliated about the abuse. She may have left the relationship before and may be afraid that people won't believe her this time. Since she feels that the responsibility for the relationship is hers, she may think the abuse is her fault. She may have denied the abuse at one time, but wants help now. Support her desire for help now.
7. Recognize and understand her ambivalence. She is often confused about her feelings. Although he abuses her, she may still love him and not want to give up the relationship. Her love for him may not stop just because he beats her. Acknowledge her ambivalence or confusion.
8. Respect the cultural values which affect her behavior. Although no woman is a stereotype, recognize that some cultural beliefs are important to her and may be a source of security for her.



9. Be aware that she may believe some of the myths also. Most cultures teach us myths about domestic violence. She tends to believe some of the myths about domestic violence even though these myths may contradict her own reality. Help her separate the myths from the truths.
10. Be aware of the effects of isolation and control issues. The woman may be physically and/or socially isolated due to location, language, intimidation, threats, economic dependence, skills, etc. She may have great difficulty trusting you or believing you will understand. Your warmth and concern for her are vital.
11. Remember that crisis situations inhibit decision-making ability. Explain slowly and carefully choices available to her. If appropriate, encourage her decision making ability. Help her assess her own resources and support systems. Provide information about community resources so that she's aware of all of her options. She may need time and a safe place before making any decisions.
12. Work at building trust with her so that she can be open about her feelings and the battering relationship. Assure her you will not betray her trust. Show concern for her safety and the difficulties she faces.
13. Remind her that she is not alone. There are many other women in similar situations. Connecting with others begins to break the isolation battered women experience. She may call a crisis line or help line, go to a shelter, join a support group for battered women, or participate in individual counseling. Support her efforts to reach out to others.
14. Remember that she may have other problems that demand immediate intervention. She may be a danger to herself or others, lack food or housing, be unable to care for her children or herself. Provide services or make appropriate referrals.

## **EXAMPLES OF SUPPORTIVE RESPONSES**

Listed below are two possible responses to statements that are frequently made by battered women. The ineffective responses are reacting to common myths that people have about battering: that the victim is to blame, that she can easily leave, that domestic violence is not dangerous, etc.

The effective responses validate her feelings, show her that you are listening to her and understanding her feelings. The effective responses may seem awkward at first, but are helpful to battered women.

Only one example is given. There are many effective responses.

STATEMENT	EFFECTIVE RESPONSE	INEFFECTIVE
"My husband started hitting me and he had no reason to hit me this time."	"Are you wondering why he hit you this time?"	"What were you doing when he hit you? What are you doing to trigger his violence?"
"He beat me so bad I went to the hospital. He broke my nose and cut my face."	"How do you feel about his hitting you?"	"Why don't you leave him? You're crazy to stay with someone like that."
"I'm worried about my kids. They are afraid of him too. Sometimes he hits them."	"You're concerned because your children are getting hurt too."	"They are better off with a father. You should go to a parenting class."
"He thinks I sleep with everyone. He's so jealous. I guess he really loves me."	"You wonder if his jealousy means he loves you."	"His jealousy will lessen if you help him trust you more."
"He yells at me and calls me names. It really hurts. He gets so angry—he's like a different person."	"You feel hurt by the things he says when he's angry."	"Don't worry. He's just letting off steam. He needs to get out his feelings."
"I'm afraid to go home—he left to get drunk. He'll beat me when he gets home."	"You feel scared because you're not safe."	"If you stop enabling him to drink, he won't drink or beat you anymore."
"My minister told me to stay. That he is in charge and I need to please him. That I have no right to break up a marriage. Marriage is forever."	"You're worried because your minister wants you to stay in the relationship no matter what."	"Your minister is crazy. Don't pay attention to him."
"He says he's sorry and he's going to get counseling. I know everything will be o.k. now."	"When he promises to go to counseling, you believe that everything will be o.k."	"You're doing the right thing. I can work with both of you so you can both see better ways to talk to each other. That's the main problem."
"He says I'm ugly and fat. Sometimes I think he's right. I'm afraid no one will ever want me."	"It sounds like you're afraid you're going to be alone for the rest of your life if you end this relationship."	"Maybe you'd feel better if you lose some weight."
"He says he'll commit suicide if I don't stay with him. Maybe I should go home until he gets better."	"You're afraid it will be your fault if he kills himself."	"You should talk to him and see if you can calm him down. He'll feel better if you're there."



# Personal Health | Jane E. Brody

## When love turns violent: the roots of abuse.

**A**ERICAN women have far more to fear from the men they know and once loved than from any stranger on the street. Domestic violence is the leading cause of injury and death to American women, causing more harm than vehicular accidents, rapes and muggings combined.

Each year an estimated six million women are beaten by the men they live with, and 30 percent of women who become homicide victims die at the hands of men with whom they have a "family" relationship. While there are some cases of domestic violence in which the wife is the abuser as well as problems of abuse among gay couples, in the overwhelming majority of cases, women are the victims at the hands of their men.

When such cases gain wide attention, the public tends to blame alcohol or drugs or poverty as the provocation. But are they? A chemical high may release inhibitions against physical abuse but it does not create a violent, power-hungry person who needs to control a spouse even more tightly than a master rules a slave. As for poverty, experts say well-educated, well-off professional men are hardly immune; they are simply better at escaping punishment.

Even when the victim's charges of abuse are believed, she is often blamed for staying with her abuser, for not throwing him out or picking up the children and leaving. Sometimes she is blamed for hooking up with a violent man, or even for provoking his attacks.

### Why Men Do It

"Why did she stay?" is the leading question. Far fewer people ask, "Why did he do it?" Yet understanding the nature of spouse abuse and the forces that foster and perpetuate it is crucial to establishing effective social and legal mechanisms for protecting the victims, breaking these violent patterns and preventing such cases from developing in the first place.

As more communities mandate



Bob Schmitt

therapy for men convicted of domestic violence, the extent and origins of their abusive behavior is at last undergoing professional scrutiny. For example, Cyndee Pattison, a therapist who runs groups for men who batter women, said, "Most of the time the men don't understand that what they are saying or doing is offensive. It's like a reflex, something they've done all their lives." She says men tend to minimize their actions and the consequences, saying things like "we had a little argument," even when the woman required stitches to close facial wounds.

Ms. Pattison, who works for Victim Services, a private nonprofit agency in New York City that aids battered women, said the men are acting on beliefs they learned from their parents and society. "Boys are taught to settle problems and disputes with their fists, whereas girls are taught to use their mouths," she said.

John Aponte, a founder of the Victim Services counseling program for men who batter, said batterers were

at the extreme of a continuum of men who "carry the seeds of superiority given to them" at an early age. "Men may use intimidation, threats, economic control or emotional abuse," he said. "It's when these control tactics don't work and a man's authority is challenged that he feels he has to resort to physical abuse."

Experts say many abusive men are the products of a vicious cycle in which they were abused as children or witnessed their fathers abusing their mothers physically or psychologically by belittling them.

The issue, Ms. Pattison said, is power and control. "Historically, women were property and men had to keep them in line," she said. An abusive man may control his wife's access to money, not allow her to work and make her account for every penny she spends. He may try to isolate her from social contacts by disapproving of her friends, escorting her everywhere she goes and alienating her from her family. And he may constantly berate her until she is convinced she is worthless. When he is through, she has nowhere to turn for support and affirmation but to him, her abuser.

may even begin to believe her batterer's rationalization that the beating is for her own good.

When a woman finally musters up the courage to leave a man who abuses her, she typically encounters insurmountable obstacles. Sarah Buel was herself once the victim of an abusive spouse. She eventually escaped with her young son, put herself through college, went to Harvard Law School on scholarship and is now an assistant district attorney for Norfolk County, Mass., and a leading advocate for battered women and court reform nationwide. She lists some problems faced by battered women who try to leave:

• Most do not have enough money to live on and cannot earn enough to support themselves or their children, particularly if the children require day care. If they have no street address, many cannot get welfare.

• Most have trouble finding a place to live. Five women are turned away for every one who seeks shelter, and 95 percent of shelters will not accept women with children.

• Leaving an abusive spouse does not necessarily bring safety; it often triggers more serious violence. More women are killed in the process of leaving than at any other time. For example, last week a Milwaukee woman was stabbed to death in the courthouse by the man from whom she was seeking court protection.

• Women who leave are afraid they will lose their children. The men, who control the money, are often able to hire good lawyers and fight successfully for custody of the children. In Massachusetts, 70 percent of men who try to gain custody succeed.

More often than not, the law fails to protect a battered woman. Abusive men, instead of being prosecuted and jailed for committing acts of criminal violence, are either not arrested or are released by disbelieving judges. They are then able to hound and terrorize their spouses until the women are forced to return. Having nowhere else to go, half of them do.

### Why Women Stay

Dr. Samuel C. Klagsbrun, psychiatrist and medical director of Four Winds Hospital in Katonah, N.Y., points out that most abusive relationships start out normally as loving, romantic and exciting. When abuse begins, women have trouble believing that something initially so wonderful is turning sour. There is a lot of apologizing and making up, and the woman thinks everything will go back to the way it once was. Slowly, barraged by repeated abuse, she becomes dehumanized, helpless and unable to see herself as a separate person and to distinguish right from wrong.

Dr. Klagsbrun, who treated Hedda Nussbaum, the abused companion of Joel Steinberg, the New York lawyer now in jail for fatal child abuse, said such women end up surviving in the same way that prisoners of war, hostages or concentration camp victims do: by trying to behave well, by accommodating their captors, by living from hour to hour. An abused woman

### Are You Abused?

Victim Services says that a woman who answers "yes" to any of these questions may be in an abusive relationship.

#### Does your partner:

- Constantly criticize you and your abilities?
- Become overprotective or extremely jealous?
- Threaten to hurt you, children, pets, family or friends?
- Prevent you from seeing family or friends?
- Have sudden bursts of anger?
- Destroy personal property?
- Deny you access to family assets or control all finances and force you to account for what you spend?
- Use intimidation or manipulation to control you or your children?
- Hit, punch, slap, kick, shove or hit you?
- Prevent you from going where you want when you want?
- Force you to have sex when you don't want to?
- Humiliate or embarrass you in front of others?

Victim Services operates a 24-hour phone line for victims of domestic violence in New York State at (212) 677-7777. The National Domestic Violence Hotline phone number is (800) 333-SAFE (7233); (800) 873-6363 for the hearing impaired.





# **Family Violence: Reaching Populations With Special Needs**





Cuc Nguyen and Rin Lay barely knew each other well enough to say hello. They were a generation apart in age and experience, and, besides, Vietnamese and Cambodian refugees don't mix much socially. But each of them, as if lured by their common tragic destinies, gravitated to the same cramped church basement in Chelsea. Cuc came to Harbor Me as a worker, while Rin was a client. The battered-women's shelter, strewn with toys and boxes of clothing, was one place where they both felt secure.

Cuc showed up at Harbor Me first, in the spring of 1989. Only 5-foot-1 and 100 pounds, with warm brown eyes and short hair combed back, Cuc was a gentle dynamo. She had been a teacher and stockbroker in Saigon during the Vietnam War until the communists took over and confiscated most of her earnings. Dauntless, she rebounded by starting a cooperative bakery.

Despite being a compulsive gambler himself, Cuc's husband opposed her risking money on the bakery. He beat her so brutally that neighbors heard the screams and saved her. Cuc escaped with her son and daughter to a refugee camp in Malaysia and then in 1981 to the United States, where she remarried and had another daughter.

In 1987, Harbor Me added one Cambodian and one Vietnamese staffer to serve Southeast Asians pouring into Revere, Winthrop, Chelsea, and East

Boston. The Vietnamese employee quit after her efforts to help battered women were greeted with threats from their husbands. Cuc, then studying at Bunker Hill Community College, was hired to replace her.

Cuc Nguyen proved to be a natural advocate. Knowing how it felt to be abused, she empathized with victims and also provided a role model for them. She crisscrossed the Boston area to obtain housing vouchers and restraining orders for Vietnamese women. Against Harbor Me policy, she even gave them her home telephone number.

Rin Lay came to Harbor Me nine months after Cuc, joining a new support group for battered Cambodian women. Separated at age 8 from her parents, whom she believed to have been killed in Cambodia, Rin had arrived in Boston as a teen-ager in 1985 with her sister. While attending the bilingual program at South Boston High, she fell in love with a Cambodian student from East Boston, and they had a son.

Rin collected welfare and earned cash under the table by decorating cakes at a Revere bakery. She bought a car, and a Florida lot she had seen

in a brochure. She owned both assets in her boyfriend's name, to avoid jeopardizing her welfare benefits. But he beat Rin for swearing in front of his parents, and she picked up her baby and left, penniless.

"Rin was ambitious," says Pheap Cortissoz, the Cambodian advocate who organized Rin's support group. "She wanted a good career. She wanted her sister to be proud of her. She thought, she can make it, she can go to school, work, be free like an American woman. She try so hard to get these things."

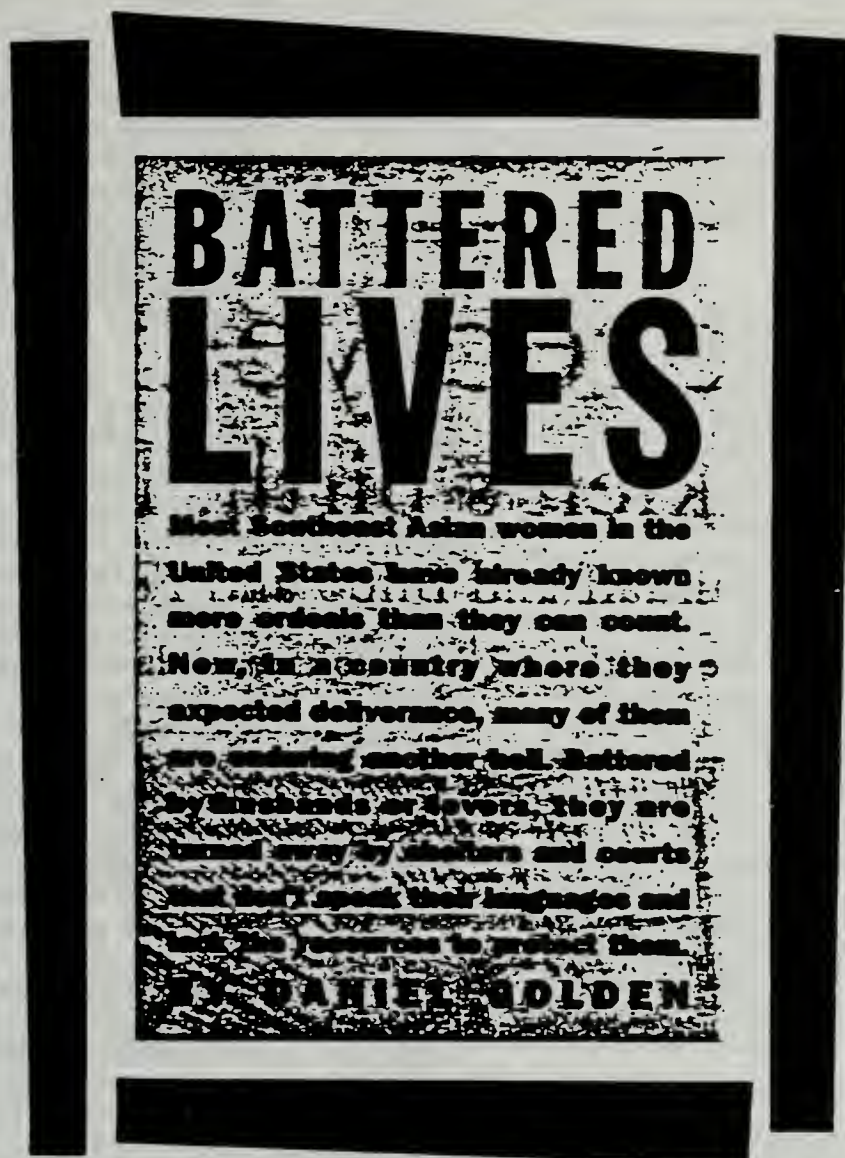
Neither Cuc nor Rin would fulfill their dream of being "free like an American woman." Emotionally drained by the uphill struggle to help battered women, and by domestic troubles that she did not confide to her co-workers, Cuc quit her job early in 1990. She gradually lost

touch with Harbor Me, although she did call once for a reference. By then, she had become an American citizen and changed her name to Nancy.

Rin searched for a stable home and a fulfilling relationship. At a Buddhist temple in Lynn, Rin prayed for a man to care for her, or, if she had squandered her chance in this life, at least a better fate in her next one.

This past May, on Mother's Day, 44-year-old Cuc Nguyen was murdered by her second husband, who then set their house on fire, killing himself and their daughter. In July, 25-year-old

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DANIEL GOLDEN IS A STAFF WRITER FOR THE GLOBE MAGAZINE.

PHOTOGRAPH BY YUNGHI KIM/THE BOSTON GLOBE



## Battered lives

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Lay was strangled and slashed to death, allegedly by her fiancé. Although Cuc and Rin had evaded abusers before, neither managed a clean break a second time. Although both were familiar with battered-women's shelters, police, and the court system, neither made more than tentative gestures for help. In the end, they were paralyzed by the same cultural imperatives — to save face, preserve the family, obey the husband — that they had valiantly challenged. "It's so ironic that Cuc was helping others get refuge," says Harbor Me staffer Anne Richmond. "But she couldn't help herself."

Most Southeast Asian women in the United States have already known more ordeals than they can count: when their homes were bombed, their parents were murdered, or they were raped by pirates or soldiers. Now, in a country where they expected deliverance at last, many of them are enduring another hell, in the form of battering by husbands or lovers.

Many of these women never report abuse. They face the same familial and cultural pressures that, before the feminist movement promoted awareness of the issue, influenced American women to hide scars. In the male-dominated societies of Southeast Asia, domestic violence is considered not a crime but a family matter, to be concealed from outsiders. "If I see a woman with a bruise on her face, little marks on her eyes, I ask why," says Bonna Sam, a Cambodian social worker at Lowell General Hospital. "They make believe they were falling down, or bumping into the door, or their child threw something at them, rather than 'I have a fight with my partner.'"

When battered Asian women do contact shelters, courts, or police departments, they are often turned away or misunderstood because of the glaring lack of Asian staff. But the handful of service agencies for Southeast Asians in the Boston area are inundated with domestic-violence cases. Two out of five refugees in a victim-assistance program at Boston's International Institute, and four out of five people helped by the state-run Cambodian Women's Health Project, are battered women.

Cuc and Rin are only the latest in a steady toll of Southeast Asian women slain by their abusers. In 1990, Souvanheuang Phachansiri, along with two other Laotian immigrants, pushed his ex-wife out of a speeding van in Revere and killed her. Accusing his wife of having love affairs at work, Ha Tran, a Vietnamese immigrant, stabbed her to death in 1988 in the Malden home that she had bought for themselves and their seven children with savings from her two jobs. Tran had been released less than a week earlier from the state mental-health system, where he had been sent after a previous assault on his wife.

Women from Southeast Asia, China, and Korea who are brought here for arranged marriages with permanent residents or US citizens have been particularly vulnerable to abuse. The Marriage Fraud Act of 1986 required immigrant women to be married for at least two years to

avoid deportation, giving free rein to domineering husbands. Last year, in response to abuse complaints, Congress amended the law to allow newtyweds who separated from their husbands to obtain green cards if they could prove that they had been battered.

All this is not to say that domestic violence is more deeply ingrained among Asians than other immigrant groups — or native-born Americans. Domestic violence knows no cultural boundaries. *Family Violence in Cross-Cultural Perspective* (1989), by David Levinson, reviewed anthropological data from 90 societies and found wife-beating in 85 percent of them. In fact, according to Levinson, one of the few societies without family violence can be found in central Thailand, where wives often plow the fields while husbands rear the children.

Some Southeast Asian women in the United States are stuck in battering relationships that began in Vietnam or Cambodia. But others are casualties of their menfolk's inability to accept a reduced role in American society. Accustomed (except in central Thailand) to being lords of the manor, Asian men in this country are required to adjust to a world where women work and socialize outside the home. They compete for scarce blue-collar jobs while their partners collect paychecks or welfare and their children learn English. Often they plunge into alcohol and drugs and vent frustration on wives or girlfriends. Left unprotected on alien soil by the deaths or absence of parents and other relatives, women are easy targets.

"Domestic violence is less prevalent among Asian immigrants than among poor, undereducated Americans, but it's a hell of a lot more prevalent here than it was in their own cultures," says Oregon psychiatrist David Kinsey, who runs a clinic for Southeast Asians. He adds that domestic violence is particularly widespread among recent immigrants, who tend to have been farmers or fishermen in their homelands and are less adaptable than earlier waves of more Westernized, educated newcomers.

Many batterers are haunted by nightmares and flashbacks of war, starvation, and other traumas. Because they are suspicious of American psychiatry — which, in any event, is rarely offered in their own languages — these symptoms often fester untreated. Kinsey is occasionally called in as a consultant to interview Southeast Asian men who have murdered women. He says, "Every man involved in one of those things has longstanding post-traumatic stress disorder or severe depression."

Inkhiane Khiaosoth knew her husband was unhappy. In California, she had married Tae Xuachun, the product of a broken Chinese-Laotian family.

After he hit her twice, she moved to Lowell with her mother, but he followed. Squabbling, they lived together off and on with her children: three by him, one by another man. Tae found a job in New Hampshire but couldn't save money to send to his relatives in Laos. He began smoking rock cocaine and drinking heavily. "It helps me think of nothing," he told his wife.

One morning this past July, Inkhiane gave \$100 to her mother to buy meat. Tae punched her in the head and shouted, "Give me back my money." Crying, Inkhiane hurried with the children to her mother's. Tae went on a binge, then broke into the home of Inkhiane's mother that night. He doused himself with gasoline and set himself on fire. He and Inkhiane's mother were killed; Inkhiane and the children were injured.

Inkhiane spent a month in the hospital. She's still shy about showing her scarred, puffy hands. As her 5-year-old son plays with a strip of torn newspaper, the 22-year-old woman says quietly that she can't talk about the fire: "Right now, it's hard to go on with my life. I feel so tired. I don't know what to do. I can't sleep. When I close my eyes at night, I see that fire all the time."

Linh Nguyen's smile lights up the dingy public library. She's describing how her plucky mother, Cuc

Nguyen, bundled up Linh and her younger brother and sailed away from Vietnam. How Thai pirates boarded their boat, and Cuc screamed at the captain until he spared 11-year-old Linh from being raped. How the Malaysian refugee camp had only canned goods and rice, so Cuc borrowed money for flour and butter, baked delicious cakes to sell, and soon bought fresh fish for her children.

Suddenly the smile vanishes. It was in the camp, Linh adds, that Cuc met the man who would destroy first her vitality and then her life: Peter Nguyen, an ex-South Vietnamese army major. "I hated him the minute I saw him," says Linh, now 21. "I felt abandoned. I just had left my father. I wanted my mom." But Peter wanted Cuc, too. Before long, he was baking cookies with her. And after Cuc and her children resettled in a Washington, D.C., suburb, Peter joined them.

Realizing that they needed a father, Linh and her brother began calling Peter "Dad." But the irreverence they were absorbing from American classmates clashed with his demand for traditional obedience. Cuc was trapped in the middle. "He tried to be very strict," says a family friend. "He forced his wife to choose between him and the kids."

Peter complained that he didn't have a job, a legal marriage, or a child. Cuc found work for him as an electrical



technician, agreed to get married, and, after a miscarriage, gave birth to Joanna in 1983. Peter doted on his daughter, but paternity didn't stop him from abusing Cuc.

After one argument in bed, Cuc pulled her mattress into the living room, and Peter set it on it. Another time, he slapped his wife. When Linh screamed, he threw a pot at his stepdaughter and hit her in the head. Guilt would assail him after such episodes, and he would buy expensive gifts for Cuc or the children — only to smash the presents in his next tantrum.

Then Cuc moved to Dorchester, near a cousin of hers, half-hoping that Peter would stay in Washington. Instead, he quit his job to join her. A Bedford firm hired him as a technician, but his temper didn't improve. Linh, who was attending a local college, came home to harrowing scenes. When she saw Peter about to hit Cuc for sending money to her relatives in Vietnam, Linh called her mother's cousin. Cuc stayed at her cousin's and put down a deposit on another apartment. But after a few days, she returned to Peter.

Emotionally drained by Peter's abuse and by the stress of her job at Harbor Me, Cuc slipped into depression. She heard voices, plotting to murder her and the children. While Peter was working the overnight shift once, Cuc called him, insisting that Linh was in danger at college. Cuc was not reassured until Peter left work and they drove to see her daughter.

"She often prided herself on being a sacrificing wife," Linh says. "I was so frustrated with her. I said, 'You're not as strong as you used to be. You've changed so much.' In some strange way, Peter liked my mom getting sick. It gave him more control. He loved to tell people, 'She's having mental now.'"

At Peter's urging, Cuc quit her job. The family relocated to Lowell, but new surroundings didn't alter old habits. When Peter threatened Cuc with a knife in August 1990, she applied for a restraining order. "My husband want to kill me and my child after that he will kill himself," she wrote in her application. "He want me living alone with him and my little girl. Let my two older children move to live with our friend. I told him I could not accept that way because I think children should live with their mother."

The temporary order was granted, and Peter was arrested for assault. But Cuc had second thoughts. She rented an apartment only three doors down from Peter's. And when it came time for the court hearings, she never showed up.

After leaving her boyfriend, Rin Lay bounced from one apartment to the next in Chelsea, Revere, and East Boston. When he harassed her, she obtained a restraining order against him. Like Cuc Nguyen, she never followed it up. She knew that the sympathies of the Cambodian community lay with her abuser.

Tall and slim, with full lips and braided hair, the unmarried mother was ostracized like a Cambodian Hester Prynne. Righteous matrons gossiped about her. She stayed with friends, but

even though she paid her share of the rent, they soon sent her packing, suspecting her of flirting with their men.

Rin exuded confidence, but such accusations hurt her — as did news that her son's father had married another woman. She blamed herself for breaking up with him. "She was a single woman, on her own," says Philip Giffey, director of the Neighborhood of Affordable Housing in East Boston. "Other people looked askance at her. They said she should have lived with her sister, in Lynn. When she left her home because of abuse, she's the one who had to feel shame. She's the one who had no economic resources. She had to pay the price for her freedom. Her abuser paid no sanction or punishment. She chose the tough and narrow road."

In February 1990, that path led downhill into a family shelter for the homeless in East Boston. Shelter workers noticed that Rin's son seemed troubled and hid behind his mother when they approached. Rin was withdrawn, too. The closest that she came to confiding in a case worker was a cryptic conversation one night in the kitchen. "I've had it with Cambodian men," Rin told the woman. "I give up." The woman told her not to judge the whole crop by one bad apple. Rin answered, "I've seen enough."

After five months in the shelter, Rin rented a subsidized, second-story apartment in an East Boston building owned by the Neighborhood of Affordable Housing. For \$15 a month, she had her first real home in a long time, and she made the most of it. She borrowed money from her sister to buy used furniture, and she hung peach curtains in the living room and off-white ones in the bedroom. A color photo of herself adorned one wall. Her upstairs neighbor turned out to be an older woman, a fellow member of Rin's support group at Harbor Me. The two of them soon formed a mother-daughter attachment.

"Rin was so happy in the new apartment," says Pheap Cortisoz, the support-group leader. "Her first reaction was, 'Now nobody will say I take their husband.'"

Her back is turned to the camera, concealing her identity. Viewers of this videotape will not see her prematurely aged face or the discolored swelling under her left eye — the legacy of her second husband's karate kicks. In the Mission Hill office of the Asian Women's Project, where she is being taped for a conference on Asian domestic violence, the 37-year-old Cambodian tells her story through an interpreter. She was a widow with one son when a soldier forced her to marry him. Soon after, he cracked her scalp with a swing of his gun barrel. He continued to batter her in a Thai refugee

camp, and in the United States. After punching her, he would lock her in the apartment so she couldn't go to the hospital.

She had four more children, in the vain hope that a family would soften him. One day in 1988, she made the wrenching choice to run away with her oldest boy, a perennial target of his stepfather's abuse. They sought sanctuary with friends in southern New England and New York. Her husband pursued them, once missing their bus by only five minutes, and paid a friend to kill them. Luckily, the friend warned them instead. The woman and her son fled south to Florida and Georgia. She went without food for days, spending what she earned from odd jobs to call her other children and send them clothes.

After eight months on the lam, she returned to fight for her children. And she found an ally — the Asian Women's Project, an advocacy program started by Cheng Imm Tan, former director of Renewal House, a shelter in Boston. The project's Cambodian staffer helped the woman gain custody of her children and a restraining order against her husband. She and her three youngest children moved into a shelter; her two sons over 12 were not admitted. Then the advocate found an apartment for the entire family. Asked how she feels today, the mother taps her chest. "I have nothing to be afraid of," she says. "But I still carry a big load of anger in here."

The project in Mission Hill is part of a nascent movement around the nation. Shelters for Asian women have sprung up in Los Angeles and San Francisco — the latter has interpreters on call in Asian languages. In New York City, an Asian women's center has a network of safe homes and apartments for victims.

As yet, such services remain a novelty, imperiled by every budget cut. For example, after Cuc quit as Harbor Me's Vietnamese advocate, she was not replaced. Deciding to concentrate its dwindling resources on the area's larger Cambodian population, the agency hired a second Cambodian staffer. And battered Vietnamese women lost a precious refuge.

Most battered-women's shelters in Massachusetts have no Asian staff; many of these agencies advise Asian callers to seek help elsewhere. "I've known shelters to say to battered women, 'We can't work with you because we can't speak your language,'" Tan says. Even if Asian women are admitted, they can't bring interpreters, who, like other outsiders, are barred for fear that they might leak the women's whereabouts. Many Asians balk at typical shelter rules that prohibit them from eating in their rooms, which they may prefer to dining with strangers, and from contact-



## Battered lives

**T**heir abusers, who may be their only family in the United States. After a few days in a shelter, Asian women often return home.

Outside major cities, the wave of programs for Asian women has not made even a ripple. Lowell is home to almost half of the state's Cambodian population, yet its one battered-women's shelter is only now trying to hire its first Asian staffer and is translating its brochures into Khmer. Lowell's Alternative House admits Cambodian women on an emergency basis for a night or two but often ends up referring them to Harbor Me, 40 miles away. There are no Cambodians in Lowell's police and fire departments. Lowell General Hospital, which reports increased admissions of battered Asian women, has no Cambodian staff on the overnight shift. When a non-English-speaking Cambodian is rushed to the emergency room, doctors call a community agency, which takes the patient's medical history by phone.

Although courts are required by law to provide interpreters, Lowell District Court has no full-time speaker of Khmer, the Cambodian language. As a stopgap, the court uses bilingual workers from community agencies, who frequently are unfamiliar with legal terminology. When battered women go to court, their advocates are hijacked as interpreters and are placed in a conflict of interest. By interpreting for the batterer, they may lose the client's trust. Even the victim's children are recruited. Christina Cole, a victim witness advocate for the Middlesex County district attorney's office, observes, "It's not fair to say to a 15-year-old child, 'Get Mom into court so we can prosecute Dad.'"

Sokha Diep, a University of Lowell student and part-time advocate for battered women, claims that the court discriminates against Cambodians. She says that clerks typically schedule the cases of Cambodians last. Once, when Diep couldn't accompany a client who needed a restraining order, a clerk sent the woman home, telling her not to return without an interpreter.

If help for Asian victims is elusive, for their abusers it is almost nonexistent. Neither of the two Boston-area programs for batterers has an Asian worker. In response to a recent state law that recommends counseling for abusers, 16 more agencies are seeking certification, but none plan to target the Asian community. Not one is in Lowell.

On the advice of state social workers that it was his only hope to regain his children, one Cambodian batterer

consulted the Emerge program, in Cambridge. His wife had left him twice. The first time, she returned after his brother, a monk, assured her that the couple's apartment was the trouble: It was possessed by demons. When it turned out that her husband could hit her anywhere, they separated again, and the children were put in foster care.

Emerge director David Adams conducted the counseling through an interpreter who spoke the abuser's second language: Chinese. Adams made little headway. Blaming his wife's independence, the batterer kept repeating, "I'm sorry, I didn't realize hitting your wife was against the law in this country."

**C**uc Nguyen knew the law, but she held back from invoking its power against her husband. She agreed to Peter's latest plan for domestic tranquility: hanging a curtain down the middle of their top-floor apartment in a blue-shingled dwelling in The Acre, a Lowell neighborhood.

It was Peter's version of the Iron Curtain. He and his daughter, Joanna, used two bedrooms and a kitchen on one side of the curtain while his stepchildren were restricted to two rooms on the other side and given a stove for cooking. The bathroom was the demilitarized zone. Only Cuc had access to both sectors.

Peter strictly enforced these rules.

He did not allow Joanna to fraternize with the enemy. Occasionally, as she roller-skated around her territory, she would peek through the curtain. Linh would say, "Boo!" and make a scary face, sending Joanna screaming for her father.

To paraphrase Lincoln, an apartment divided against itself cannot stand. The strain told on both sides of the curtain. Linh watched an *Oprah* show about an abuser who killed his wife, and she "got so scared." Peter was having flashbacks to his confinement in a communist re-education camp, when he was so desperate for meat that he caught lizards and ate them alive. Up for a transfer at work, he persuaded his boss to cancel it, saying that any change might reactivate painful memories. He relaxed only on weekends, in the company of other former South Vietnamese military, drinking one cognac and soda after another.

Still afflicted by nightmares, Cuc summoned her resolve to leave. This past May, without telling her husband, she consulted a lawyer about divorce, arranged to go on welfare on June 1, and found a downtown Lowell high-rise apartment for herself and the three children. Then she visited Quyen Tran, her best friend since they met as classmates at Bunker Hill Community College. A staffer at the East Boston Ecumenical Council, Quyen had recom-

mended Cuc for her job at Harbor Me.

As they talked in Quyen's bedroom in East Boston, Cuc asked to borrow \$300 for her rental deposit. When Quyen agreed, Cuc warned her friend, "If I die, I can't pay you back."

On the evening of May 12, Cuc and the older children were secretly moving furniture from their side of the curtain to their new apartment. Linh and her brother were eager to sleep there and asked Cuc to join them. But she was unwilling to leave Joanna alone overnight while Peter went to work.

Cuc returned home at around 9 p.m. At 11:30, Peter was seen going to his parked car on the street and coming back with a package that probably contained a gasoline can. Investigators say that he stabbed Cuc 18 times with a carving knife, and set the apartment on fire, before stabbing himself twice. The blaze spread to a bedroom where 7-year-old Joanna slept. The girl crawled out of bed but died of smoke inhalation on the floor.

Months later, Linh is still mentally pleading with her mother to run before it's too late. "She said, 'We'll move, we'll move.' But we never made a clean break," Linh says.

"It's very preventable. My mother came across the ocean on her own. Wife abusers shouldn't have this power. They're scared to death of police. All you have to do is move to another state and get your life together. If they mistreat you, you can stop it, as long as you're alive. These wife abusers will give up. They're losers."

**T**he New Year of 1991 brought wondrous tidings for Rin Lay. Her parents, whom she had not seen or heard from in 17 years, were alive in Cambodia. She sent them her last \$500, along with a videotape of herself, and promised to visit in September. By then, Rin hoped, she could boast about a career and a husband. She was about to finish a computer training course, although it would be hard competing with Americans for jobs during a recession. And she had a very determined suitor.

Michael Duong worked as a waiter and courier in New York City. Fourteen years older than Rin, he met her through a mutual friend. A Cambodian immigrant, he had an ex-wife and two children in California. Michael dressed flashily and dazzled Rin with his fluency in six languages, including French, Norwegian, German, and English.

What turned her head even more was his attentiveness. He visited her apartment often enough to cause tension between Rin and her erstwhile friend upstairs, whom Rin accused of spying on them. Back in New York, Michael called Rin every morning before computer class and each night before she went to sleep.



When Michael proposed marriage, Rin consulted a Cambodian fortune-teller in Lynn, who advised against it. Rin said yes anyway and flew to New York, where Michael gave her a diamond ring. But as he drove her back to Boston, she glimpsed the flip side of his devotion — an obsessive desire for control. He wanted to stop for a meal, but Rin insisted on going straight home. He punched her in the temple, and she fell and hit the dashboard. Later, Rin showed the bruise to Harbor Me's Cortissoz, saying that Michael had told her not to see a doctor.

To prepare for the wedding, Michael stayed with Rin's sister and brother-in-law in Lynn. But they threw him out after they heard about an incident at an engagement party for one of Rin's friends. Michael had arrived late and found Rin dancing. Berserk with jealousy, he pulled her outside and struck her.

By the end of June, Rin was having second thoughts. It wasn't just the battering. She also heard stories that Michael gambled. Police would later find that he frequented Atlantic City casinos and allegedly owed \$30,000 to organized crime. Probably to erase a gambling debt, although he told Rin that it was to raise money for their wedding, Michael took back her engagement ring and pawned it.

Even her support group's excursion to the USS *Constitution* on July 1 couldn't lift Rin's spirits. "She look very sad," says Cortissoz. "She feel like something is gonna happen to her, but she's not sure what. She kept say 'Tell me what to do.'" The Harbor advocate told Rin to relax and have fun.

A few days later, Michael tried to move his belongings into her apartment, but Rin prevented him. Her brother-in-law, Koun Kheal, suggested calling the police. "She was afraid to do that, because she felt pity for him," he says.

On Monday morning, July 8, Koun and Rin's sister stopped by Rin's apartment, found her arguing with Michael about the ring, and left. Then, police believe, Michael Duong murdered Rin and fled in her car. Rin's mutilated body, lying on her bedroom floor, was not discovered until four days later. Duong, who abandoned Rin's car in New Jersey in October, remains at large.

After the murder, Rin's support group at Harbor Me disbanded. The advocate, Cortissoz, blames herself: "After I heard Rin was dead, I remembered she tried to tell me. I should have listened more." Rin's son now lives with his father, who had abused mother. Rin's sister collapsed in September and was hospitalized for several months. And Rin's parents in Cambodia still don't know that the daughter they found after so many years is lost forever. •





For these and other materials, we thank Information Plus, publishers of surveys of the current literature on a variety of subjects.

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## WHAT IS ELDER ABUSE?

One of the major problems in discussing and researching elder abuse is that there is no agreed-upon definition. This is a relatively unstudied area of research—not only the study of elder abuse, but also the study of the elderly. Some researchers have applied concepts and definitions that have developed from studying child and wife abuse to elder abuse, while others see this as a mistake.

Over the last decade, researchers have identified physical abuse, psychological abuse, material abuse, financial abuse, violation of rights, active neglect, passive neglect, psychological neglect, self-neglect, and poor residential environment. Individual definitions vary dramatically, and what one researcher calls passive neglect is psychological neglect to another, and what is material abuse to one is a violation of rights for another. They all agree that hitting an elderly person, threatening them with a knife or gun, not giving them food, or

stealing their money is elder abuse. Determining precise definitions, however, is necessary for legal purposes, the ability to compare research, and to establish uniformity in reporting.

The results of a three-day "Conference on Elder Abuse and Neglect", held at the University of New Hampshire in 1985 and attended by the leading figures in the field, reflected the difficulty in reaching an acceptable common definition for elder abuse. Dr. Karl Pillemer's overview of the gathering, "Elder Abuse and Neglect: Recommendations from the Research Conference on Elder Abuse and Neglect" (University of New Hampshire, Durham, NH, 1986), reported that the conference could not reach an agreement on a definition. "After lengthy deliberation, participants concluded that the definition, and therefore basic conceptions of abuse itself, varied with professional perspective and that even within the same profession different parameters are used."

About the only thing they could agree upon was that the term should apply to those 65 years and older, although many experts not at the conference do not even accept this. Some researchers drop as low as 50 years of age, and others believe that since health care has improved so dramatically, only those 70 years and older should be counted.

## SOME DEFINITIONS

The American Association of Retired Persons (AARP) has been committed to the issues of elder abuse. In their publication *Domestic Mistreatment of the Elderly: Towards Prevention* (by Richard L. Douglass, 1988, WDC: American Association of Retired Persons) they use the term, "mistreatment" emphasizing that this is abuse that is inflicted by someone else as opposed to self-neglect which often is a result of mental deterioration.

The AARP classifies mistreatment into different categories. The presence or absence of motivation to cause harm is a principle consideration, dividing active rather than passive (accidental)



behavior. The AARP also distinguishes mistreatment duration. Is this harm that has started only with old-age or has it been part of a person's earlier life? They use the following definitions:

**Passive Neglect**—The unintentional failure to fulfill a caretaking obligation; there is no conscious or willful attempt to inflict physical or emotional distress on the older person. Examples: non-provision of food or health-related services because of the caregiver's infirmity, laziness, or inadequate skills, knowledge, or understanding of the necessity of prescribed or other essential services.

**Psychological Abuse**—The infliction of mental anguish. Examples: demeaning, name calling, treating as a child, insulting, ignoring, frightening, humiliating, intimidating, threatening, isolating.

**Material (Financial) Abuse**—The illegal, or unethical exploitation and/or use of funds, property, or other assets belonging to the older person.

**Active Neglect**—The intentional failure to fulfill a caretaking obligation, including a conscious and willful attempt to inflict physical or emotional stress or injury on the older person. Examples: deliberate abandonment, deliberate denial of food or health-related services, depriving of dentures or glasses.

**Physical Abuse**—The infliction of physical pain or injury, or physical coercion (confinement against one's will). Examples: slapping, bruising, sexually molesting, cutting, lacerating, burning, physically restraining, pushing, shoving.

The (Pennsylvania) Attorney General's Family Violence Task Force, in *Violence Against Elders* (1988, Harrisburg, PA), defined "elder abuse" as

any of several forms of mistreatment of an elder by a person with whom the elder victim has a special relationship. The forms of mistreatment include physical abuse (non-accidental physical force that results in injury), sexual abuse (non-consensual sexual contact), psychological abuse (infliction of mental anguish by threat, intimidation, humiliation, or other such conduct), financial abuse (unauthorized use of funds or property), and neglect (failure to fulfill a caretaking obligation). Some of the literature and statutes on elder abuse distinguish among several types of neglect. The types include active neglect (willful failure to provide care), passive neglect (non-willful failure to provide care resulting, for example, from inadequate knowledge or infirmity of the caretaker), and self-neglect (failure of the elder, usually as a result of physical or mental impairment, to care adequately for himself or herself).

The Task Force noted that elder abuse may or may not be a crime. Most physical, sexual, and financial abuses are crimes. Depending on the conduct and the consequences, some psychological abuses can be crimes. Neglect, under certain conditions can be a crime, while self-neglect is never a crime.

Elder abuse can further be classified as "institutional elder abuse" or "domestic elder abuse." The Pennsylvania Task Force defined these terms by the relationship between the abuser and the elder victim, not the physical location where the abuse took place. "Institutional elder abuse" is done by a person who has undertaken a contractual



obligation to provide care to the elder victim. "Domestic elder abuse" is done by a person who has volunteered to provide care to the elder victim or who otherwise has a special relationship with the victim. Although the Pennsylvania Task Force believes "the relationship between the abuser and the abused is a more important distinction than the site of the abuse," many researchers consider "institutional elder abuse" only that which is committed in an institution.

## DIFFICULTIES WITH DEFINITIONS

Problems with definitions often arise when they are applied to specific cases. Tanya Johnson, in "Critical Issues in the Definition of Elder Mistreatment" (in *Elder Abuse—Conflict in the Family*, see above), discusses some of the problems that can develop:

Does the act of tying the older person to a chair constitute elder mistreatment? What if tying the older person to a chair is a method to protect the older person from injury due to falling. What about the older person who is malnourished because of the poor eating habits of the caregiving family? Can we say that a family is neglectful of the older member's nutritional needs if they apply the same standards to themselves? Is the older person who appears anxious signaling mistreatment from others or a personality characteristic peculiar to that individual? The inclusion of intent to harm in definitions of elder mistreatment raises a number of questions that have no easy answers. Should families who are unaware that they are being neglectful be counseled by professionals in the same way as those who have knowingly left the older person unattended? If the effect is elder neglect, how important is the cause?

Johnson prefers a definition based upon the suffering ("intense and sustained pain and anguish") of the victim. This would eliminate the isolated incident of shoving or occasional "slandorous" name calling which may come out of a fit of frustration. Nonetheless, Johnson recognizes that even her definition runs into serious problems. "For some older persons, teasing may cause mental anguish; for others it may be the usual mode of interaction." Some families have shouted at each other all their lives, and it indicates no abuse, while for others it might involve considerable suffering. Each case must be handled in the context of that individual relationship.

The legal issues are also important. Pillemer reports that several people at the Conference of Elder Abuse and Neglect expressed concern that "too broad a definition . . . might allow extensive state intervention." Some argued that "mandatory reporting laws with . . . broad definitions can result in unwanted intervention . . . may lead to institutionalization due to the lack of alternative services." For example, if a poor family simply cannot take care of the elderly to the level required by law (an issue that also comes up in child neglect cases), is the elderly person better off in a nursing home (a likely consequence since there is almost no funding for home care of the elderly)?

## PROBLEMS OF REPORTING

Not having consistent definitions of elder abuse affects reporting laws and data collection. Although there are mandatory reporting laws, the states vary widely in their definitions, in the standards they provide for reporting, the penalties for failure to report, and the types of immunity provided for those who do report abuse. For this reason it is impossible to gather national data and the extent and types of abuse which exist. It also prevents developing an effective prevention program.

Unlike child abuse, where the victim is often in constant contact with teachers, doctors, and others



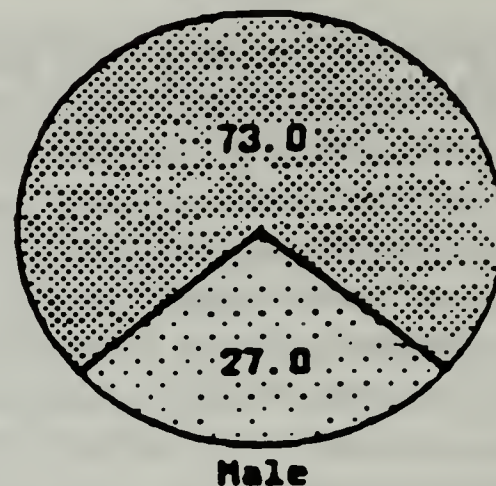
who might recognize the results of abuse, the elderly are often isolated and do not come into contact with those who might recognize they have been the victims of violence. Caregivers can attribute bruises and broken bones to a fall. An elderly victim might not be believed because of confusion or senility.

A significant difficulty in gathering information from the elderly is their reluctance to either report or prosecute the crime. Margaret F. Hudson in, "Elder Mistreatment: Current Research" (Chapter VI in *Elder Abuse*), writes that the elderly often deny (consciously or unconsciously) that the abuse is taking place for several reasons:

1. fear of retaliation, abandonment, or being removed from the home or family setting;
2. belief that the abuse was deserved;
3. sense that there is nowhere else to go or that nothing can be done to help;
4. shame in admitting such treatment by one's own children... elders wish to protect their image as good parents. If their children have abused them, then, as some elders believe, it must have been their own fault.

Most elderly are afraid of nursing homes. Many would rather stay at home and be mistreated than be institutionalized. Since social workers cannot force an elderly person to report an abuser, they must honor each person's right to choose. Sometimes, even though the cases reach extreme violence or neglect, the authorities are unable to take any action. In the government report, "Elder Abuse: A Decade of Shame and Inaction" (1990, WDC), a case history documented a woman who was brought to the hospital by paramedics. She was confused, dehydrated, had a maggot infested leg and weighed about 60 pounds. She was bruised all over her body and had a gash on her face. "She wouldn't confirm that her daughter had beaten her or denied her care because, 'I don't want to get anyone in trouble.'" Two weeks after being brought to the hospital, she died and her daughter could not be located.

**FIGURE 16.1**  
**Sex Of The Abused**  
**Elders**

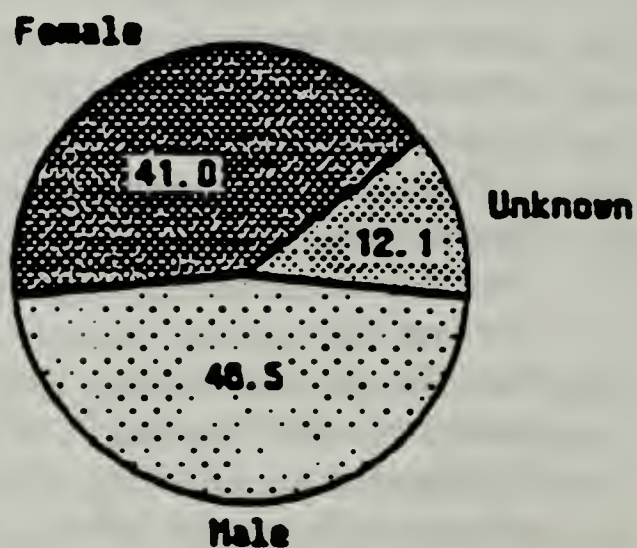


**TABLE 16.1**  
**Ethnicity of the Abused**

Ethnicity	Elders	
	Number	Percent
TOTAL...	456	100.0
White	297	65.1
Black	34	7.5
Asian	2	0.4
Hispanic	40	8.8
Other	2	0.4
Unknown	81	17.8

**FIGURE 16.2**

**Sex Of The Abuser**  
**Elders**



Source of above: *Dependent Adult/Elder Abuse*, Department of Social Services, California, (1984)



Fear of isolation, loss of support, and great embarrassment resulting from the revelation that their own children would abuse them is often greater than the fear of continued abuse. Usually a neighbor or another relative reports the abuse. Elderly cooperation in the prosecution of the crime is just as unusual. As a result, the statistics used in the few studies on elderly abuse perhaps must be seen as indicative of the reality, but not the reality itself.

### HOW FREQUENT IS ELDER ABUSE?

Karl Pillemer and Jill Sutor, in "Prevention of Elder Abuse" (Robert Ammerman and Michael Hersen, eds., 1990, *Treatment of Family Violence*, NY: John Wiley and Sons), point out that very few scientifically valid studies of elder abuse have been conducted. Some experts have characterized elder abuse as being in the situation that child abuse was in 20 years ago. S. Powell and R. Berg (1987, "When the Elderly are Abused: Characteristics and Intervention," vol. 13, *Educational Gerontology*), observed that, "Lack of quality data has led to statements presented as facts that have no scientific foundation but are used to frame both policy and programs to treat and prevent the abuse of older persons."

### A California Study

In 1984, the California State Department of Social Services, in *Dependent Adult/Elder Abuse — Characteristics Survey* (1985), surveyed the reports of abuse against the elderly (and dependent adults) received by the county welfare departments for July 1984. There were 456 reports for those over 65.

The study found the typical abuse victim was female (73 percent or 333 of the cases) and about 78 years of age (Figure 16.1). Over one-half of the abused were white (65 percent), followed by Hispanic (8.8 percent), and black (7.5 percent) (Table 16.1). The alleged abuser was more often male (46.5 percent), but was nearly as often a woman (41 percent) (Figure 16.2). The abuser was usually

TABLE 16.2

#### Relationship of Suspected Abuse to Victim

Relationship	Elders	
	Number	Percent
TOTAL...	456	100.0
Guardian	7	1.5
Spouse	70	15.3
Parent	2	0.4
Offspring	169	37.1
Other Relation	70	15.4
No Relation	107	23.3
Unknown	31	6.8

TABLE 16.3

#### Type of Abuse

Abuse	Elders	
	Number	Percent
TOTAL...	456	100.0
Fiduciary	191	41.9
Physical	205	45.0
Mental	121	26.5
Neglect	138	30.3
Abandonment	16	3.5
Other	4	0.9
Unknown	8	1.8

TABLE 16.4

#### Frequency of Abuse

Frequency	Elders	
	Number	Percent
TOTAL...	456	100.0
Daily	123	27.0
Weekly	14	3.1
Monthly	29	6.4
Sporadically	96	21.1
Unknown	194	42.4

Source of above: *Dependent Adult/Elder Abuse*, Department of Social Services, California, (1984)



... (30.4 percent)—most often an offspring (37 percent) followed by spouses or other relatives in equal proportions (15.5 percent). In those cases indicating no relation (23.3 percent), it might have been a caretaker, housekeeper, or landlord who had abused them. (See Table 16.2.)

Table 16.3 shows that almost half (45 percent) of the cases involved physical abuse, followed by fiduciary (monetary) abuse (42 percent), neglect (30.3 percent), and mental abuse (26.5 percent). Almost half of the reported cases involved more than one type of abuse. The reported abuse was committed daily in more than one-fourth (27 percent) of the cases, however, it was reported to be only sporadic in 21 percent of the cases (Table 16.4). Hospitalization was required in about one-quarter (25.4 percent) of the cases. In 19.5 percent of the cases no injury was reported, but in two cases the abuse resulted in death (Table 16.5). The overwhelming majority (86.2 percent) of cases occurred in a private residence with only a small percentage (8.5 percent) happening in institutions. Over half (51.6 percent) of the abuse was reported by a caregiver who was not related to the victim such as a custodian or health practitioner or a concerned citizen. Only 9.7 percent of the victims reported their own abuse (Table 16.6). A large majority of the elderly (85.5 percent) agreed to accept some type of social services to help them, most (93.8 percent) receiving it from adult protective services.

## THE FIRST LARGE RANDOM SURVEY

Karl Pillemer and David Finkelhor, well-known authorities in the field of abuse and members of the Family Violence Research Program at the University of New Hampshire, completed the only large-scale, random sample survey. Between September 1985 and February 1986, the Center for Survey Research at the University of Massachusetts (they conducted the survey for Pillemer and Finkelhor) interviewed 2,020 elderly households in the Boston metropolitan area regarding their experience of physical violence, verbal aggression, and ne-

TABLE 16.5			
Extent of Injury			
Extent	Elders		
	Number	Percent	
TOTAL...	456	100.0	
Not Physical Abuse	251	55.0	
Physical Abuse	205	45.0	100.0
No Injury	40		19.5
Death	2		1.0
Hospitalization	92		25.4
Healthcare Provider	17		8.3
No Medical Treatment	39		19.0
Unknown	35		24.8

TABLE 16.6			
Who Reported Abuse			
Report	Elders		
	Number	Percent	
TOTAL...	456	100.0	
Victim	44	9.7	
Abuser	2	0.4	
Custodian, Practitioner, Employee, etc.	195	34.1	
Concerned Citizen	80	17.3	
Relative	64	14.0	
Other	90	21.7	
Unknown	12	2.6	

Source of above: *Dependent Adult/Elder Abuse*, Department of Social Services, California, (1984)

glect. Elderly in institutions were not included in this survey. Drs. Pillemer and Finkelhor published their conclusions in "The Prevalence of Elder Abuse: A Random Sample Survey" (1988, vol. 28, no. 1, *Gerontological Society of America*).

Pillemer and Finkelhor found that of the 2,020 persons interviewed, 63 persons, or 32 per 1,000 elderly, had been mistreated. Based on the population of Boston, where the survey was taken, Pillemer and Finkelhor estimated that between



8,646 and 13,487 elderly Bostonians suffered abuse. If this rate were applied to the United States, between 701,000 and 1,093,560 older Americans have possibly been abused. (For various methodological reasons, Pillemer and Finkelhor believe they might have undercounted, to some extent, the number of abused. Also, they have not counted financial abuse.) The most commonly cited statistics for the rate of elder abuse range between 500,00 and 2.5 million cases per year. The upper estimate, however, is generally considered to be a distortion of Pillemer's work which had concluded that no more than 1.1 million older Americans had ever been abused.

### Most Elderly Abused by the Elderly

Unlike most other studies, Pillemer and Finkelhor found spouses committed most of the violence done to the elderly. They reported that almost three-fifths (58 percent) of the abusers were spouses, compared to 15 percent of the cases which involved abuse by a son or a daughter. (See Table 16.7.) The researchers found little difference between minority and white elderly, older old (over 75) and younger old (65 to 74) and no significant differences based on religious, economic, or educational background. Most earlier studies have found a higher rate of elderly abuse among the older elderly and the more economically disadvantaged. The researchers believe the higher rate among these two groups might be more accountable not to, "a greater risk for abuse but from the greater visibility of the very old and disadvantaged to potential reporters of abuse."

On the other hand, they found those living alone had much lower rates of abuse. This was to be expected since simply being in constant contact with another person would naturally increase the chances of violence. Consequently, those living alone, such as widows, divorcees, and those never married, suffered less abuse. Those in poor health were more likely to suffer from neglect than those in good health as did those elderly with no caretaker.

**TABLE 16.7**

Perpetrator — Victim Relationship  
(Including Proxy Respondents, unweighted data)

	All types	Physical violence	Chronic verbal aggression	Neglect
Husband to wife	14 (22%)	7 (17%)	7 (27%)	2 (29%)
Wife to husband	23 (36%)	17 (43%)	7 (27%)	—
Son to mother	5 (8%)	4 (10%)	2 (8%)	—
Son to father	5 (8%)	3 (7%)	3 (11%)	—
Daughter to mother	4 (6%)	1 (3%)	2 (8%)	2 (29%)
Daughter to father	1 (2%)	1 (3%)	—	—
Other	11 (18%)	7 (17%)	5 (19%)	3 (42%)
Total	63	40	26	7

\*The total number of cases in specific categories exceeds the All Types category, because more than one type of abuse was sometimes present.

Source: *Gerontologist*, vol. 28, no.1, p.54, 1988.

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### Spousal Abuse

As noted above, Pillemer and Finkelhor found most elderly people are abused by their spouses. Until research began to show otherwise, the accepted stereotype of elder abuse had been that of a mentally or physically dependent parent moving in with a child, who, overwhelmed by the situation, strikes out in some way against the parent. In this survey, spousal abuse, not child against parent violence, appeared to be the more common situation. This was not because the elderly are any more violent than their children. Rather, since spouses are more likely to live in the household than are the children, the opportunity for violence is greater. "If more elderly lived with their children," note Pillemer and Finkelhor, "there would probably be more child-to-elder violence." The spousal abuse may well be the pattern of these marriages that has existed for years and is continuing into old age.

When compared with the other forms of domestic violence, elderly abuse has traditionally been compared with child abuse because of the similar dependent position of the abused person. This survey suggested "that elder abuse has much more in common with spouse abuse than child



abuse." Pillemer and Finkelhor noted, however, that the important factor in the abuse is the person who lives with the elder and that because more elderly live with their spouses, they are abused more often by that person. Examining the data, the researchers found that the rate of abuse was 41 per 1,000 elders who lived with a spouse and 44 per 1,000 elders who lived with their adult child. Pillemer and Finkelhor also pointed out that some earlier studies had found spousal abuse to be a major factor in elderly abuse, but that this had been played down. They attributed this to the desire of those trying to gain sympathy for the abused elderly, to put the issue in the most compelling light. The image of an adult child abusing a dependent, weak, elderly person is sure to raise sympathy, while the image of one elderly person hitting another is less likely to do so.

### **Men and Women Equally Abused**

The second major finding in the Pillemer and Finkelhor study was the roughly equal rates of abuse against men (52 percent) and women (48 percent). This runs counter to virtually every other study. The researchers attributed this to two factors. First, older men were far less likely to live alone than older women. Men tend to die younger than women, so women are more frequently left to live alone. When men lose a spouse, they are more likely to remarry or live with their families than are women who lose a mate. Consequently, men are

more frequently in a situation at risk for abuse than if they were living alone. Secondly, abuse by a woman against a man is likely to be less serious than the violence of a man against a woman. Men are bigger, stronger, and better able to defend themselves. As a result, women are more likely to suffer serious injury and therefore be reported to medical authorities or social welfare agencies. These are the sources from which the previous studies received their information. (See Chapter IX for rates of women who abuse their mates.)

### **What Can Be Done?**

The study stressed the importance of educating service providers and the elderly about spouse abuse. This is particularly important for the elderly, many of whom grew up in a generation which was much more tolerant of spouse abuse than the current generation. Many elderly victims accept spouse abuse because they believe it is acceptable. They need to be made aware that it is not, and that they can do something about it.

Pillemer and Finkelhor wanted researchers to realize that elder abuse can be the subject of general population surveys and not just data from clinical samples and reported cases. "It is hoped that this effort will open the door to other investigations and that many of the remaining troubling questions about this disturbing problem will soon yield to greater insight." It has not yet come about.

To report elder abuse, call the Elder abuse Hotline 1-800-922-2275.



# Attorney General SCOTT HARSHBARGER



## *Law Enforcement*

### ELDER ABUSE REPORTING AND INTERVENTION

#### **BACKGROUND**

In 1983, the Massachusetts mandatory reporting law went into effect as G.L. c. 19A. This law requires that certain professionals<sup>1</sup> report suspected occurrences of elder abuse, neglect and financial exploitation. Reports are investigated by social service professionals and, in serious circumstances, cases are referred to the district attorney.

#### **MANDATORY POLICE RESPONSIBILITIES**

##### **WHEN POLICE OFFICERS HAVE REASONABLE CAUSE TO BELIEVE**

**Expansive definition:** "Reasonable cause to believe" is not intended to restrict the reporting of cases or the acceptance of reports. Furthermore, written documentation of "reasonable cause" is not required. Op. Atty. Gen., May 27, 1975, p. 139 (specific issue concerned reporting under the child abuse law).

##### **THAT AN ELDER, WHO IS 60 YEARS OF AGE OR OLDER,**

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<sup>1</sup> Other mandated reporters include, for example, doctors, dentists, firefighters, EMT's, nurses, psychologists, social workers, and home health aids. Also, in cases where elders are abused in a nursing home setting, mandated reports are provided to the Department of Public Health which, in conjunction with the Attorney General's Office, conducts the investigation. See G.L. c. 111, s. 72F-72L. Generally, police officers do not become aware of nursing home abuse.

## **HAS SUFFERED OR IS SUFFERING FROM ELDER ABUSE,**

**Physical and Emotional Abuse:** The non-accidental infliction by another person of serious physical or emotional injury, including sexual assault. This is a broad definition that covers any non-trivial physical injury (e.g., bruising). Emotional injury involves any severe state of anxiety, fear, depression or withdrawal by the elder.

**Neglect:** The failure or refusal by a caretaker to provide one or more of the necessities essential for physical and emotional well-being -- such as food, clothing, shelter, social contact, basic hygiene and medical care.

**Caretaker defined:** There are many situations in which someone may become the caretaker of an elderly person. In general, a caretaker relationship arises when it reasonably appears that the elder relies on the person for substantial care, whether or not the caretaker acts on a voluntary basis. Thus, the term includes, for example, a family member who lives with the elderly person and regularly cares for her, a paid nurse who does the same, and also a neighbor or friend who stops by regularly to provide lunch for the elderly person.

**Financial Exploitation:** An act or omission (the failure to act) by another person which causes substantial monetary or property loss to an elder, *or* substantial monetary or property gain to the other person which gain would otherwise benefit the elderly person but for the act or omission of such other person; provided, however, that such an act or omission shall not be construed as financial exploitation if the elderly person has knowingly consented unless such consent is a result of misrepresentation, undue influence, coercion or threat of force; and, provided further, that financial exploitation shall not interfere with or prohibit a bona fide gift by an elderly person.

**THE OFFICERS ARE MANDATED BY CHAPTER 19A TO MAKE AN IMMEDIATE VERBAL REPORT TO THE EXECUTIVE OFFICE OF ELDER AFFAIRS (EOEA) OR THEIR REGIONAL PROTECTIVE SERVICES AGENCY (PSA).**

### **Practical reporting techniques:**

1. Should always first report incident to designated, local PSA;
2. To report abuse during non-business hours -- nights, weekends, holidays -- call the state *hotline* number: 1-800-922-2275 V/TDD. Screener at hotline will convey information to the worker at the local PSA. If it is an emergency, a PSA worker will respond immediately. But remember, the hotline does not only have to be used for



emergencies, officers can telephone in reports of any nature during non-business hours.

**FOLLOWING THEIR ORAL REPORT, THE OFFICERS MUST FILE A WRITTEN REPORT TO EOE A OR THEIR LOCAL PSA WITHIN 48 HOURS.**

**Reporting technique:** Use EOE A form to facilitate written report, then send it to local PSA;

**Contents of report:**

**Mandatory:** Officers must include the following information:

1. Name;
2. Approximate age of the victim;
3. Address of abused elderly person;
4. Nature and extent of abuse.

**Desired information:** Include the following if known:

5. Name of caretaker;
6. Any medical treatment being given or immediately required;
7. Any other relevant information.

**OFFICERS DO NOT FACE CIVIL OR CRIMINAL LIABILITY FOR FILING A REPORT UNLESS THEY ACTUALLY PERPETRATED THE OFFENSE.** Furthermore, supervisors may not retaliate, in any manner, against employee/reporters.

**HOWEVER, IF OFFICERS FAIL TO FILE A REPORT, THEY CAN BE SUED IN CIVIL COURT AND/OR PROSECUTED AND FINED UP TO \$1,000.**

### ***PROTECTIVE SERVICES RESPONSIBILITIES***

**AN EMERGENCY WILL BE ASSESSED BY A CASEWORKER WITHIN 24 HOURS.**

**Immediate services** must be provided to alleviate the emergency condition, including a petition for a court order of emergency protective services if necessary.

**EMERGENCY AND NON-EMERGENCY INVESTIGATIONS WILL BE COMPLETED IN 14 DAYS.**

**Visits:** Investigations involve one or more visits to the elder's residence.

**Right of refusal:** Elders who are competent -- that is, have the ability to understand

and appreciate the consequences of their decisions about protective services -- have the right to refuse any investigation.

**Exceptions:** However, protective services will complete the investigation in situations in which the elder is believed to lack the capacity to consent or where there is specific information that the elder is acting under duress, intimidation, threats or force in refusing the investigation.

**IF THERE IS REASONABLE CAUSE TO BELIEVE THAT DEATH HAS OCCURRED FROM ABUSE, THE PSA MUST IMMEDIATELY REFER THE CASE TO THE DISTRICT ATTORNEY.**

**BASED ON THE INVESTIGATION, IF THERE IS REASONABLE CAUSE TO BELIEVE THAT POTENTIALLY CRIMINAL ABUSE OR FINANCIAL EXPLOITATION HAS OCCURRED, THE PSA MUST REFER THE CASE TO THE D.A. WITHIN 48 HOURS.** The D.A. may investigate and decide whether to initiate criminal proceedings.

**FOLLOWING ALL INVESTIGATIONS, THE PSA SHALL DEVELOP A SERVICE PLAN.** Services typically provided by the PSA involve homemaker services, transportation and meals, medical and housing assistance and so forth.

**Orientation of Protective Services:** Staff are sensitive to the needs of the elderly and make every effort to maintain elders in their own homes with appropriate and least restrictive services. Again, protective services respects their clients' right to self-determination, which means they may choose to accept or reject services.

**What Adult Protective Services Can Do For Law Enforcement:**

1. Provide assistance in emergency situations.
2. Intervene when a physically or mentally ill person refuses to allow law enforcement to provide services.
3. Assist with investigation and interrogation of physical and sexual abuse victims to aid in conviction of the perpetrator.
4. Assist in securing services for chronic substance abusers.
5. Assist in relocation when eviction of an elderly or disabled adult is necessary.
6. Assist in securing services for "street people."
7. Assist in investigation of theft of resources and property if by a



caretaker.

8. Provide services and support to elderly and disabled when a caretaker is arrested or removed, which tends to ease the mind of law enforcement personnel.
9. Assure elderly or disabled individual on probation or parole receives resources necessary to allow them to successfully reside in the community.
10. Provide advice and support when questionable situations related to elderly and disabled individuals occur.

**THE PSA MUST NOTIFY OFFICERS IN WRITING WITHIN 45 DAYS OF THEIR REPORT TO TELL THEM ABOUT THE ACTIONS TAKEN IN RESPONSE TO THE REPORT.**

## **FINANCIAL EXPLOITATION**

Financial exploitation of the elderly can be categorized by the type of perpetrator. The potential criminal charges remain the same, but the circumstances of the violation, the nature of the investigation, and the appropriate law enforcement response will typically differ depending on the type of perpetrator.

**CARETAKERS:** *Responsible for the care of the elder, generally has a personal relationship.*

**FIDUCIARIES:** *A professional with a position of trust — e.g., a lawyer, accountant.*

**SCAM ARTISTS:** *A stranger who appears in person or over the telephone.*





# Attorney General SCOTT HARSHBARGER

## *Law Enforcement Advanced Training*



### TOPICS COVERED

- **DEMOGRAPHICS:** Presents facts to inform the audience that they will be dealing with more and more older people in the future. By 2020, almost one in five in the United States will be 65 and over, about the same percentage of older people as in Florida today. The implications are becoming more apparent. As the demographics of this country move us toward an older society, contacts between law enforcement and older citizens will increase, especially given the shift towards community policing.
- **MYTHS AND FACTS OF AGING:** Provides information that accurately portrays the capabilities of older people, and looks to break down certain stereotypes that people bring to their interactions with the elderly. Chronological age and functional age are not the same – about 80% of those over 65 are fully capable of carrying on normal life activities; 81% live with their families and are homeowners. This "real" picture of the elderly not only serves as the basis for greater understanding, which leads to more effective communication, it also underscores the importance of police efforts to intervene in domestic situations and to respond to financial exploitation.
- **FEAR, VICTIMIZATION, AND VULNERABILITY:** Discusses the sources of fear and vulnerability that characterize the elderly's perceptions of and/or experience with crime. This section has important implications for effective crime prevention which, under a community policing orientation, is increasingly viewed as a department-wide responsibility. The training also offers insight on how to deal with the elderly victim/witness.
- **COMMUNICATING WITH THE ELDERLY:** Informs participants of teaching, interview, and behavioral techniques that can help them deal with the hearing and seeing problems experienced by some older people. Through the use of videotape scenarios, participants will examine common interaction failures and then observe ways to be more sensitive to "clues," thus engaging in "service-oriented" communication.
- **THE VALUE OF SPECIALIZED TRAINING:** Introduces the audience to the Milwaukee Study. Within the context of the elderly, this study demonstrates that the nature of the police response is more significant in the citizen's mind than technical job proficiency. By exposure to the Milwaukee experience, officers will comprehend the value of enhanced communication skills and be more willing to integrate these approaches into their work.



- **CRIMINAL INVESTIGATION:** Offers a checklist approach to investigators embarking on an elder abuse investigation. Emphasis is placed on report writing skills and photographs of the scene and any injuries. Much of the material has been developed from techniques employed in domestic violence cases. Clearly, organized approaches to investigation yield positive outcomes in court.
- **FINANCIAL EXPLOITATION:** Examines the three categories of financial exploitation and the role of the police officer in preventing and investigating these kinds of crime. Financial exploitation is perpetrated by: (1) *Caretakers*, who take advantage of their personal relationships to misuse the elders' funds; (2) *Fiduciaries*, who use their professional position (e.g., as a lawyer or financial advisor) to divert assets for their own purposes; and (3) *Scam Artists*, who are strangers to the elderly victims they swindle through the use of various fraud schemes. Beyond familiarity with these categories, participants will learn important investigative steps as well as approaches they might employ to educate the public.
- **THE ELDER ABUSE REPORTING LAW AND WORKING WITH PROTECTIVE SERVICES:** Covers the fundamental relationship between law enforcement and local protective service workers – mandated reporting requirements, the nature of the protective services investigation and family intervention.
- **DOMESTIC VIOLENCE AND CHAPTER 209A:** Reviews the whole panoply of laws concerning domestic violence – restraining orders, mandatory arrest, civil liability concerns and so forth – within the context of the elderly victim. Increasingly, a greater percentage of these calls involve elderly victims. The police function can become all the more complicated when, as is often the case, elderly victims oppose police intervention because they fear that removing the abusive caretaker will result in their being institutionalized.
- **MENTAL HEALTH ISSUES AND CHAPTER 123:** Analyzes Chapter 123 from the street officer's and supervisor's perspective. Officers know that being an effective community presence means more than enforcing laws, but they are concerned about being sued and unsure of their authority in mental health matters. Increasingly, elders are finding themselves in abusive situations caused by their mentally ill caretakers. In these instances, officers may employ Chapter 123 to good advantage. Aside from elder cases, Chapter 123 applies in a myriad of situations and, as a consequence, is an essential body of knowledge for any officer.
- **MISSING PERSONS AND ALZHEIMER'S DISEASE:** Looks at the characteristics of elderly wanderers and advocates an immediate response that enlists the support of local agencies.
- **CASE STUDY PANELS:** Presents a series of case studies where officers and protective service workers will have the opportunity to interact and discuss their respective roles and responses. There will also be the opportunity to apply the knowledge gained during the seminar. This format will likely stimulate discussion on other issues of mutual concern and has proven, in other trainings, to be a valuable and enjoyable exercise for participants.



# **Attorney General SCOTT HARSHBARGER**

## ***Law Enforcement Advanced Training***



### **SCHEDULE**

The Elderly Protection Project will hold sixteen (16) regional, two-day, advanced law enforcement trainings. The Attorney General is pleased that Secretary Frank Ollivierre and staff from the Executive Office of Elder Affairs and its local protective services agencies will participate in and help to present the trainings.

The schedule below indicates training dates and the participating protective service agencies and police departments from the corresponding cities and towns.

#### **SEPTEMBER 22-23, 1993**

Montachusett Home Care Corporation

Ashburnham, Ashby, Ayer, Berlin, Bolton,  
Clinton, Fitchburg, Gardner, Groton,  
Hubbardston, Lancaster, Lunenburg,  
Leominster, Pepperell, Princeton, Shirley,  
Sterling, Templeton, Townsend,  
Westminster, Winchendon

#### **OCTOBER 6-7**

Elder Services Of Berkshire County, Inc.

Adams, Alford, Becket, Cheshire,  
Clarksburg, Dalton, Egremont, Florida,  
Great Barrington, Hancock, Hinsdale,  
Lanesborough, Lee, Lenox, Monterey,  
Mount Washington, New Ashford, New  
Marlborough, North Adams, Otis, Peru,  
Pittsfield, Richmond, Sandisfield, Savoy,  
Sheffield, Stockbridge, Tyringham,  
Washington, West Stockbridge,  
Williamstown, Windsor

#### **OCTOBER 20-21**

Baypath Senior Citizens Services, Inc.

Ashland, Dover, Framingham, Holliston,  
Hopkinton, Hudson, Marlborough,  
Natick, Northborough, Sherborn,  
Southborough, Sudbury, Wayland,  
Westborough

Tri-Valley Elder Services, Inc.

Bellingham, Blackston, Brookfield,  
Charlton, Douglas, Dudley, East  
Brookfield, Franklin, Hopedale, Medway,  
Mendon, Milford, Millville, Northbridge,  
North Brookfield, Oxford, Southbridge,  
Spencer, Sturbridge, Sutton, Upton,  
Uxbridge, Warren, Webster, West  
Brookfield

#### **OCTOBER 27-28**

Elder Services Of Cape Cod and The Islands, Inc.

Barnstable, Bourne, Brewster, Chatham,  
Chilmark, Dennis, Eastham, Edgartown,  
Falmouth, Gay Head, Harwich, Mashpee,  
Nantucket, Oak Bluffs, Orleans,

Provincetown, Sandwich, Tisbury, Truro,  
Wellfleet, West Tisbury, Yarmouth

## **NOVEMBER 3-4**

Elder Home Care Services Of The Worcester Area,  
Inc.

Auburn, Barre, Boylston, Grafton,  
Hardwick, Holden, Leicester, Millbury,  
New Braintree, Oakham, Paxton, Rutland,  
Shrewsbury, West Boylston, Worcester

## **NOVEMBER 15-16**

Health And Education Services, Inc.

Danvers, Marblehead, Middleton, Peabody,  
Salem

Senior Home Care Services, Inc.

Beverly, Essex, Gloucester, Hamilton,  
Ipswich, Manchester, Rockport, Topsfield,  
Wenham

Greater Lynn Senior Services, Inc.

Lynn, Lynnfield, Nahant, Saugus,  
Swampscott

## **DECEMBER 1-2**

Western Massachusetts Elder Care

Belchertown, Chicopee, Granby, Holyoke,  
Ludlow, South Hadley

Greater Springfield Senior Services, Inc.

Agawam, Brimfield, East Longmeadow,  
Hampden, Holland, Longmeadow, Monson,  
Palmer, Springfield, Wales, West  
Springfield, Wilbraham

## **DECEMBER 8-9**

Coastline Elderly Services, Inc.

Acushnet, Dartmouth, Fairhaven, Gosnold,  
Marion, Mattapoisett, New Bedford,  
Rochester

Bristol Elder Services, Inc.

Attleboro, Berkley, Dighton, Fall River,  
Freetown, Mansfield, North Attleborough,  
Norton, Raynham, Rehoboth, Seekonk,  
Somerset, Swansea, Taunton, Westport

## **JANUARY 19-20, 1994**

Boston Senior Home Care  
Central Boston Elder Services, Inc.  
Southwest Boston Senior Services

All of the neighborhoods and areas of  
Boston

## **JANUARY 26-27**

Chelsea/Revere/Winthrop Elder Services

Chelsea, Revere, Winthrop

## **FEBRUARY 9-10**

Health & Social Services Consortium, Inc.  
(HESSCO)

Canton, Dedham, Foxborough, Medfield,  
Millis, Norfolk, Norwood, Plainville,  
Sharon, Walpole, Westwood, Wrentham

South Shore Elder Services, Inc.

Braintree, Cohasset, Hingham, Holbrook,  
Hull, Milton, Norwell, Quincy, Randolph,  
Scituate, Weymouth

## **FEBRUARY 23-24**

Minuteman Home Care Corporation

Acton, Arlington, Bedford, Boxborough,  
Burlington, Carlisle, Concord, Harvard,  
Lexington, Lincoln, Littleton, Maynard,  
Stow, Wilmington, Winchester, Woburn

West Suburban Elder Services, Inc.

Belmont, Brookline, Needham, Newton,  
Waltham, Watertown, Wellesley, Weston



## MARCH 16-17

Somerville-Cambridge Elder Services, Inc.

Cambridge, Somerville

Mystic Valley Elder Services, Inc.

Everett, Malden, Medford, Melrose, North  
Reading, Reading, Stoneham, Wakefield

## APRIL 6-7

Highland Valley Elder Services

Amherst, Blandford, Chester, Chesterfield,  
Cummington, Easthampton, Goshen,  
Granville, Hadley, Hatfield, Huntington,  
Middlefield, Montgomery, Northampton,  
Pelham, Plainfield, Russell, Southampton,  
Southwick, Tolland, Westfield,  
Westhampton, Williamsburg, Worthington

Franklin County Home Care Corporation

Ashfield, Athol, Bernardston, Buckland,  
Charlemont, Colrain, Conway, Deerfield,  
Erving, Gill, Greenfield, Hawley, Heath,  
Leverett, Leyden, Monroe, Montague, New  
Salem, Northfield, Orange, Petersham,  
Philipston, Rowe, Royalston, Shelburn,  
Shutesbury, Sunderland, Warwick,  
Wendell, Whatley

## APRIL 20-21

Old Colony Elder Services, Inc.

Abington, Avon, Bridgewater, Brockton,  
Carver, Duxbury, East Bridgewater,  
Easton, Halifax, Hanover, Hanson,  
Kingston, Lakeville, Marshfield,  
Middleborough, Pembroke, Plymouth,  
Plympton, Rockland, Stoughton, Wareham,  
West Bridgewater, Whitman

## MAY 18-19

Elder Services Of The Merrimack Valley, Inc.

Amesbury, Andover, Billerica, Boxford,  
Chelmsford, Dracut, Dunstable,  
Georgetown, Groveland, Haverhill,  
Lawrence, Lowell, Merrimac, Methuen,  
Newbury, Newburyport, North Andover,  
Rowley, Salisbury, Tewksbury,  
Tyngsborough, Westford, West Newbury

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# Unique Aspects

## of Violence in Teen Dating Relationships

- ➡ **T**he power differential between younger boys and girls may not be as strong as when they are older (14+), when physical and social power imbalances between men and women become more pronounced. In early adolescence, neither may possess the capability to physically dominate the other. Therefore, incidents of girls using physical abuse against boys probably occur in more equal numbers at earlier ages. Although some girls do continue to use violence, more often they learn that they are at an increasing disadvantage if they continue this response.
- ➡ **S**imultaneously, of course, socialization influences on girls tend to reinforce submission to males in other aspects of life as well.
- ➡ **D**ue to lack of experience, teens may be especially susceptible to the sex-roles presented in society which are overwhelmingly stereotypical and not equalitarian models. Indeed, teens may feel more confusion than adults about all kinds of appropriate behavior in intimate relationships due to lack of experience and confused messages from society regarding sexual behavior, decision-making, birth control, etc. This may contribute to a girl's inability to judge if her boyfriend's abusive behavior is the norm or out of line. The isolation which results from abuse makes it even more difficult for her to compare her experience with others.
- ➡ **R**elationships which are perceived as significant by teens may be much shorter—sometimes lasting only a few months—than adult relationships. However, at this developmental level, teen relationships are perhaps experienced as intensely as adult relationships.
- ➡ **T**he victim is often unable to avoid the abuser because they attend the same school. This fact increases her fear and sense of entrapment.
- ➡ **M**any teens resist seeking help from their parents and other adults, especially authority figures like the police or court officers. At this developmental stage, teens are typically struggling for independence and want to solve problems themselves or with their peers. They fear, rightly or wrongly, that if told of the abuse, their parents would curtail their newly-gained independence and control future decisions about their relationships or other aspects of their lives.
- ➡ **A**dults have legal options for protection which may be unavailable to teens or possible only if their parents or guardians are involved in the action. This is a barrier for many teens who resist telling their parents about the abuse.
- ➡ **I**n some situations, the relationship is ended after an abusive intervention by peers. For instance, friends or brothers of the girl may beat up the abusive boyfriend or warn him to leave her alone. This kind of intervention may protect the immediate victim, but probably does little to change the abuser's behavior in future relationships.

*Used with permission from*  
The Curriculum Project; The Minnesota Coalition Against Domestic Violence  
570 Ashbury Street, St. Paul, MN 55104  
(612)646-6177

## Early Warning Signs for Victims

As adolescents, boys and girls are forming their first conclusions about what to expect and accept in intimate relationships. Teenagers may be predisposed to accept physical violence because of their exposure to it in their homes (either as victims or witnesses) or in the media. Given this early learning, it is critical for school personnel to recognize and respond to the early warning signs. The following are common clues that a student may be experiencing dating violence or date rape.

➡ *Physical bruises or other signs of injury*

Bear in mind that victims will often attempt to hide their injuries due to embarrassment. Be alert to sudden changes in dress or make-up, as well as explanations of injuries which seem out of character.

➡ *Truancy, failing, withdrawal from activities, dropping out of school*

An abusive relationship drains the victim of energy. The energy she still has is spent trying to make things right for him.

➡ *Sudden or increased social isolation.*

Due to shame or jealous accusations on the part of her violent boyfriend, the victim will withdraw from friends and become increasingly isolated.

➡ *Difficulty making decisions*

Victims may appear anxious about making independent decisions because they must continuously "get permission" from their boyfriends. Another sign is the victim's avoidance of eye contact.

➡ *Sudden changes in mood or personality*

These changes may include depression, withdrawal, acting out, secretiveness, increased insecurity or feelings of inadequacy, anxiousness, preoccupation with her boyfriend.

➡ *Use of alcohol or drugs.*

This may be in response to direct pressure from her boyfriend or an attempt to numb her pain or emotional ambivalence about the relationship.

➡ *Pregnancy*

Many teenaged girls feel pregnancy will help them get out of a bad situation. Over 70% of pregnant or parenting teens are beaten by their boyfriends. Pregnancy significantly increases the risk of violence in teenage relationships.

➡ *Crying easily; getting "hysterical" or overreacting to minor incidents*

The victim who lives in fear of another incident is living under extreme tension. She is constantly trying to second-guess her boyfriend's moods in her attempt to avoid his violence. Reacting to this stress, she may explode or become hysterical in response to something minor (for example, screaming when asked why she is late for class).



# Early Warning Signs for Perpetrators

Young men who physically or sexually assault their girlfriends don't often fit our common stereotype of the bully or "macho" man. There are literally all types of perpetrators. Some are loudly aggressive, while others are quite passive in public. Some are gregarious, while others are "loners." Many are attractive and popular model students from model families. Often the victim is not believed when she reports that her boyfriend has abused her since violence doesn't fit the picture that others have of him. It is important for school personnel to look beyond students' academic and social reputations when they investigate reports of physical or sexual abuse.

➡ *The victim or her friend report abuse or threats*

Remember, there are all types of victims too. Some lack credibility because they have a worse reputation than their boyfriends or dates. This is a common problem for rape victims. Don't be swayed by public image.

➡ *Alcohol or drug use*

Some perpetrators rely on alcohol or drugs to release them from their normal inhibitions or to give them the "courage" to become more aggressive toward their girlfriends. Alcohol and drug use is sometimes used in gang rapes to help perpetrators "forget the rules" or to ply the victim.

➡ *Possessive or jealous behavior toward girlfriend*

Whether in public or private, possessiveness and jealous accusations often precede and follow violence. The abusive boyfriend will often attempt to socially isolate his girlfriend by "forbidding her" to see or talk to others or by making frequent accusations of infidelity which force her to limit her social life in order to appease him.

➡ *Involvement with younger girls (or boys)*

Boys who habitually date girls who are much younger do so because they feel they can be more dominant than when the girl is the same age or older.

➡ *Harassment or threats toward girlfriend or former girlfriend*

Failure to accept the breakup of a relationship is a common indicator of physical abuse. Often, girls are abused or threatened when they try to end the relationship.

➡ *Suicide attempts or threats of suicide over a relationship*

Suicidal gestures or threats can be intended to manipulate the girlfriend into remaining in the relationship. In some cases, they can be accompanied by physical abuse or threats of homicide.

➡ *Marked changes in mood or personality*

Extreme agitation, depression, social withdrawal, or aggressiveness can be tip-offs to relational conflict or violence.

➡ *Fights with other boys over girlfriend*

This can indicate a pattern of jealous accusations or possessive control toward his girlfriend. He may be constantly monitoring her interactions with other boys, even after they have broken up.

➡ *Pressuring girls for dates or sex*

Boys who use coercive tactics to win dates are likely to be abusive in order to maintain the relationship. Getting angry when a girl refuses to go out is one sign of this. Other tactics include threats, uninvited touching or sexual advances, social ridicule, grandiose promises, and refusal to accept "no" for an answer. Intense preoccupation with going out with a particular girl or with having sex are potential indicators of physical abuse.



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*Public displays of anger or ridicule toward women*

These may include frequent or loud pronouncements of scorn toward a particular woman or toward women in general. They may also include sexual harassment of women, ranging from making suggestive sexual comments or gestures to uninvited touching or grabbing. As common as such behaviors are for adolescent males, they often indicate real problems in respecting and relating to women.

Many of the above warning signs are common male behaviors. This may lead school personnel to ignore them or downplay their significance. However, the prevalence of such behaviors does not reduce their significance as predictors of violence and other problems. Even if they are not accompanied by violence, these are controlling behaviors which will hinder the development of trust and respect between girls and boys, whether in intimate or social relationships. All of the above behaviors are manifestations of common social attitudes which deserve to be addressed on the social as well as the individual level.



# Not So Different, After All

## Justice: The trials of gay domestic violence



THERESE M. BREEN

**Happier times: Venable at a gay parade**

**C**ELIA VENABLE KNEW THAT HER daughter Laura was a lesbian. Over the years she had met and liked several of Laura's lovers. But her last one, Roseann Peterson, left Celia very upset. As she recalls it now, Celia saw the women fight—and well remembers Laura's black eyes, broken nose and shattered finger. When Laura and Peterson visited Rogue River, Ore., last Christmas, Celia threatened Peterson. Laura got mad—and afraid. "Now look what you've done," Laura told her mother. "I have to go home with her." Laura did. Five months later her decayed body parts were found in a wicker basket in a field near the apartment she shared with Peterson in Vallejo, Calif. Laura Venable had been decapitated.

Prosecutors say Peterson confessed to the crime and explained that Laura provoked it by hitting her with a baseball bat during a nap. Peterson pleaded not guilty. But before a trial could be held, a judge ruled that police had violated Peterson's *Miranda* rights and threw out the confession. Prosecutors had to drop the case and detectives are now trying to collect other evidence to implicate her. Peterson, mean-

while, is in jail on unrelated charges that she butchered a dog and threatened a neighbor and police. Peterson has pleaded not guilty. Celia waits and wonders, still shocked and grieving. "I can't understand why Laura didn't get away from that situation," she says. "You can see it with men fighting each other. I can't fathom this."

"This" has been called the second closet. Talking about domestic violence in lesbian, as well as gay, relationships has long been considered taboo in those communities—lest their discussion spark more homophobia in society. "In a sexual minority, there's always resistance to airing dirty laundry," says Terry Person, program director of San Francisco's Community United Against Violence. That may be especially true for lesbian activists. "It messes up their rhetoric," says Sandy Lundy, a Boston lawyer. "It makes you see domestic violence as an issue of power, not gender."

**Fewer resources:** There aren't many places to turn for aid. Lesbians often don't feel welcome at shelters set up for battered heterosexual women. Gay men have even fewer resources. In Boston, the Victim Recovery Program at the Fenway Community Health Center was established seven years ago for victims of gay-bashing. Now half the phone calls concern domestic violence.

The law often is of little help. A recent study found that same-sex couples in nine states cannot get a restraining order against a batterer. In other states, existing domestic-violence laws may not be as strictly enforced. "When lesbians are involved," says Claire Renzetti, a sociologist at St. Joseph's University in Philadelphia, law-enforcement officials "think of it like a cat fight or two women going at it." In the courtroom, lesbian defendants tend not to invoke the "battered women's defense" that has been used successfully to defend heterosexual women. The problem: they would have to acknowledge their homosexuality, which could prejudice a jury.

The legal system may also have a difficult time distinguishing victim from aggressor in same-sex abuse cases—unlike heterosexual relationships, where 95 percent of batterers are male. Physical attributes can be misleading in investigating same-sex violence, particularly for lesbians. "If one of them is taller or heavier, somebody's going to be painted as a butch and somebody's going to be painted as a femme," Lundy says. And sometimes, somebody's going to be painted dead.

PATRICIA KING in San Francisco

## IS LESBIAN BATTERING THE SAME AS STRAIGHT BATTERING?

How lesbian battering is similar  
to battering in heterosexual relationships

1. No one deserves to be abused.
2. Abuse can be physical, sexual, verbal behavior to coerce or humiliate, emotional or psychological.
3. Abuse often occurs in a cycle fashion.
4. Abuse can be lethal.
5. The purpose of the abuse is to maintain control and power over one's partner.
6. The abused feels alone, isolated, afraid and usually convinced that the abuse was somehow her fault or could have been avoided if only she had known what to do.

How lesbian battering is different from heterosexual battering:

1. Lesbians who have been abused have much more difficulty finding appropriate support than straight women.
2. The myth prevails that lesbians abuse must be "mutual." No one assumes straight abuse is mutual.
3. Utilizing existing services is tantamount to "coming out" and a major life decision.
4. Support services and friends often minimize lesbian violence for several reasons -- because the lesbian community doesn't want to destroy the myth of a "lesbian utopia", because the battered woman's movement doesn't want to destroy their myth of "all violence is caused by men", because it is easy to fall into the trap of assuming that the size of a person has anything to do with battering.
5. To complain about lesbian abuse is to reinforce the stereotype that lesbians are "sick." No one would claim straight relationships in general are mentally unstable because there is sometimes abuse.
6. Lesbians have to face not only the sexist culture, but also a homophobic one as well. A woman of color must face sexism, homophobia, and racism!
7. Lesbian survivors may know few or no other lesbians; leaving the abuser could mean total isolation.
8. Lesbians usually aren't as tied financially to their partners as are straight women.
9. The lesbian community is small, and in all likelihood everyone the survivor knows will soon know of her abuse.



## VIOLENT AND COERCIVE BEHAVIORS UTILIZED IN LESBIAN BATTERING

### PHYSICAL

Assaults with weapons -- guns, knives, whips, tire irons, cars, tent poles, high-heeled shoes, chair legs, broken bottles, pillows, cigarettes, poison.

Assaults with the batterer's own body -- biting; scratching; kicking; punching; stomping; slapping; throwing down stairs; smashing eye glasses on the face of the victim; locking the victim in a closet or utilizing other confinement; tickling until loss of breath or panic.

### SEXUAL

Rape; sex on demand; sexual withholding; weapons utilized or threatened sexually; forced sex with others; involuntary prostitution; coercing monogamy or nonmonogamy; denying reproductive freedom; physical assaults during sexual encounters; sexually degrading language.

### THREATS

Threats to commit physical, sexual or property; destruction; threats of violence against significant third parties; stalking, harassment.

### ECONOMIC CONTROL

Control over income and assets of partner; property destruction; interfering with employment or education; economic fraud; purchase of valuable assets in the name of the batterer only; using credit cards without the partner's permission; not working and requiring the victim to support the batterer.

### PSYCHOLOGICAL OR EMOTIONAL ABUSE

Humiliation, degradation; lying; isolation; selection of entertainment/friends/ religious experience; telling the partner that she is crazy, dumb, ugly; withholding critical information; selecting the food the partner eats; bursts of fury; pouting or withdrawal; mind manipulation.

### HOMOPHOBIC CONTROL

Threatening to tell family, friends, employer, police, church community, etc., that the victim is a lesbian if she does (or doesn't)...; telling the victim she deserves all that she gets because she is a lesbian; assuring her that no one would believe she has been violated because lesbians are not violent; reminding her that she has no options because the homophobic world will not help her.

Excerpted from "Lesbian Battering: An Examination: by Barbara Hart in Naming the Violence: Speaking Out About Lesbian Battering, Kerry Lobel, ed., Seal Press, 1986.





## **Supplemental Materials**







# *The Commonwealth of Massachusetts*

## *Office of the Attorney General*

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*Boston, MA 02108-1698*

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ATTORNEY GENERAL

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### DOMESTIC VIOLENCE FACTS

- \* In Massachusetts, on average, a woman was killed by her batterer every 22 days in 1990, every 16 days in 1991, every 13 days in 1992, and as of May 21, 1993, a woman was killed by her abuser every 14 days (Massachusetts Department of Public Health).
- \* In Massachusetts, between September 7, 1992 and August 2, 1993, 44,183 domestic violence restraining orders were issued to 40,147 defendants (Massachusetts Department of Probation).
- \* National surveys indicate that at least 2 million women per year are severely assaulted by their male partner (Straus and Gelles, 1990).
- \* From 1976 through 1987, the deaths of approximately 38,648 people over the age of 15 resulted from one partner killing another. Of these deaths 61% of the victims were women killed by their husbands or boyfriend, and 39% were men killed by women partners (Browne and Williams, in press).
- \* According to FBI Uniform Crime Reports data on homicides that occurred in the U.S. between 1976 and 1987, more than twice as many women were shot and killed by their husband or intimate acquaintances than were murdered by strangers using guns, knives or any other means (Kellerman et al., 1992).
- \* In a national survey over half of the males who were violent toward female partners also abused their children (Finkelhor, et al., 1983).
- \* In the United States women are more at risk to be assaulted and injured, raped, or killed by a current or ex-male partner than by all types of assailants combined (Finkelhor and Yllo, 1985; Browne and Williams, 1989).
- \* Abused women make up approximately 22 - 35% of women presenting with injury to hospital emergency rooms (Randall, 1990).
- \* About 3 million children each year witness abuse of one parent by another (Robert S. Pynoos, M.D., U.C.L.A. School of Medicine).
- \* Violence by intimate partners is the leading cause of injury for women, "responsible for more injuries than car crashes, rape, and muggings combined" (Stark and Flitcraft, 1981).
- \* Abuse of pregnant women is the leading cause of birth defects and infant mortality (March of Dimes study).





# RESTRAINING ORDERS FOR VICTIMS OF DOMESTIC VIOLENCE

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**E**ach year about 2 million women are severely assaulted by their male partners. The abuse is usually repetitive and increases in frequency and severity over time. Despite laws specifically aimed at curbing abuse, the criminal justice system has been inadequate in protecting domestic violence victims from their abusers. After charges are filed, it may take months for a domestic violence case to come to trial—and the criminal courts offer no protection to the victims of abuse in the interim.

Civil restraining orders allow a victim to get court-ordered protection from an abuser within a day or two of an incident by filing a sworn statement that the violence has occurred and that she has reason to fear continued abuse. If the judge finds that violence occurred, an emergency order is issued immediately. A full hearing, following notification of the abuser, is scheduled within two or three weeks. The emergency order mandates that the abuser have no contact with the victim and usually requires the abuser to vacate the home.

Besides forbidding contact between the victim and perpetrator or abuse, restraining orders can give abuse victims and their children other protections. The standard order used in Colorado, for example, can award temporary care and control of minors to either party, and specify visitation limits in cases where care and control have been awarded.

Civil restraining orders may be

used instead of, or in combination with, criminal prosecution. The potential advantages are that civil orders provide much faster access to the courts than criminal procedures, and the lower standard of proof and the absence of criminal penalties significantly reduce the court time required to hear the case. The victim may not want the abuser prosecuted; her goal is often just to get the abuse to stop.



*Approximately one-third to one-half of all homeless women are fleeing domestic violence.*

The use of these orders assumes that they are effective in protecting victims, yet reviews of state practices indicate that the police often do not know about restraining orders or will not enforce them. Judges have questions about the type of restrictions to place on the abuser and the effects on the victim, children, and abuser. How should courts respond to reported violations? Should judges become

concerned when women who are granted temporary orders do not return to court to seek permanent orders?

Urban Institute senior researcher Adele Harrell and colleagues Barbara Smith and Lisa Newmark studied a sample of 350 domestic violence cases in Denver and Boulder, Colorado, involving women who sought court restraining orders because of abuse by

current or former spouses or boyfriends. They interviewed the women three months after a temporary order was issued, and again nine months later—one year after the original order—to obtain information about the nature of the abuse and the response of the police and courts to violations. The women's reports of protection order violations were augmented by a search of court and police records for incidents during the year after the order. A sample of 142 men named in restraining orders were interviewed about the effects of the order and anticipated consequences of violations. The researchers also

observed court and police procedures and inter-

viewed criminal justice system personnel. Their findings:

- *Restraining orders were requested by women facing serious and often repeated threats to themselves or their children. Forty percent of the women suffered physical injury during the incident that led them to court. The most frequently reported violent acts included punching, kicking, or hitting (28%); grabbing, pushing, or shoving*



(32%); choking or strangling (11%); and slapping (12%). Many women were subjected to terrifying threats such as threats to kill (31%), threats of bodily harm (26%), threats to take or harm the children (17%), and destruction of property (16%).

The average number of different acts of abuse these women experienced in the year before seeking the order was about 13. Overall, 77 percent of the petitioners reported at least one act of severe violence, 87 percent reported a less serious violent act, 89 percent reported threats or property damage, and 96 percent reported other psychologically abusive acts of manipulation or intimidation—all prior to the incident that led to court. Seventy percent of the women said children had been present during at least one incident.

- *Sixty percent of the women who received temporary protection orders stated that their partner violated the order within a year. These violations ranged from unwanted phone calls or visits to severe abuse. The history of abuse in the year prior to the event that prompted the restraining order predicted the risk of violation of the order. More serious prior abuses foreshadowed more serious violations.*

A second powerful predictor of later violation of the order was the abuser's resistance during the hearing. Men who objected to the restraining order were three to four times as likely to violate it—with risk increasing with the number of objections. Also, women with children were more likely to experience continued problems with their abusers.

- *Calls to the police to report protection order violations were high, but arrests and court hearings were rare, despite a law making order violations a crime. Although women rated the police highly for their response to the incident that led to the temporary order, they were dissatisfied with police response to order violations. Despite a*

Colorado law that makes violation of a restraining order a criminal act, no arrest was made for 80 percent of reported violations.

- *Getting a temporary order of protection was easier in many respects than getting a permanent order. In both Boulder and Denver, help was available for filling out forms and court fees were waived for the indigent. Other barriers remained, however, including logistical difficulties in scheduling cases. Of those who obtained temporary orders, 40 percent did not return for permanent orders. The reason given most often was that the man*

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***"Forty percent of the women [requesting restraining orders] suffered physical injury during the incident that led them to court."***

---

stopped bothering the complainant, at least temporarily. But more than 40 percent of those who did not return for permanent restraining orders said they were unable to get the temporary order served on their partner.

- *Both men and women were confused about the contents of orders. Researchers found that the judges took the hearings seriously and listened to the women's requests, but they generally relied on standard forms and did not personalize the conditions of the order. This caused confusion about the content of the order and few orders spelled out specifics.*

For example, few women understood that they could return to court and apply for an extension to get a temporary order served. More than one-third of the women reported that pressure from the man or fear of retaliation caused her to drop the petition, not realizing that coercing the

women to drop the order is prohibited. Some women did not realize they could return to court to seek a violation hearing.

More than four-fifths of the men claimed they obeyed all the conditions, yet nearly a fifth said they tried to talk their partner out of getting a permanent order—they tried to "work things out." Some parties did not understand the no-contact clause, believing it meant only that they should not unduly bother the complainant.

- *Training and more research are needed to help courts respond effectively to requests for restraining orders. The researchers suggest that judges might spend time in the hearing explaining steps the woman can take if she is being pressured by the man to not get a permanent order, and judges might make it clearer during both temporary and permanent hearings that women can return to court to report violations.*

Judges responsible for hearing petitions for restraining orders should receive training in the dynamics of domestic violence, the effects of civil orders of protection, and the types of conditions courts may impose. A study of the impact of specifically tailored orders is an important area for further research.

When women are faced with barriers to relief from abuse, judges should be urged to rethink their traditional role and coordinate the efforts of other agencies to help abused women. They can also work with probation departments, where relevant.

Effective judicial responses also need the support of appropriate law enforcement. Police officers need training in the history of abuse commonly associated with these orders and the correct response to violations.

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*See "Court Processing and the Effects of Restraining Orders for Domestic Violence Victims," by Adrie Harrell, Barbara Smith, and Lisa Newmark, May 1993, available from the Research Paper Sales Office for \$11.00.*



# Identifying the Assaultive Husband in Court: You Be the Judge

by David Adams, M.Ed.

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David Adams is Co-founder and President of *Emerge: A Men's Counseling Service on Domestic Violence*. He is a nationally known expert on counseling assaultive husbands.

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Individual and institutional suppression of the truth frequently run parallel courses in history. Even when the truth is not actively suppressed, it is sometimes resisted because of the low status of its tellers. Such is the case with wife abuse. The ability of individual perpetrators to conceal or justify their violence has been facilitated by a criminal justice system that has historically ignored or blamed the battered woman (Taub & Schneider, 1982; New York Task Force on Women in the Courts, 1986). But the criminal justice system is not alone in letting the abusive man off the hook. The downplaying of domestic violence and the tendency to blame victims have been well documented among social service providers, medical personnel, clergy, and the media (Schechter, 1982). Too often, those who are in a position to intervene have failed to educate themselves about wife abuse. Biased preconceptions about men and women have impaired nearly everyone's ability to identify wife abuse and consequently, our ability to hold abusers responsible for their violence. Even our questions betray a preoccupation with the victim's choices and responsibilities rather than those of the perpetrator. We ask, "Why does she put up with it?" rather than "Why does he beat her?" Finding the truth means moving beyond popular

stereotypes and learning to ask the right questions. Court officers must be especially careful to ask plaintiffs whether they fear potential reprisals from the defendant in reporting domestic assaults.

As frightening as domestic abuse is, the experience of publicly disclosing it has been compared to stepping off a cliff. Disclosure not only puts the battered woman at greater risk for retribution from her abuser but it also severely jeopardizes her social and economic security. Research shows that, far from being irrational, these fears are well-founded. Women are most likely to be murdered while attempting to report abuse or to leave an abusive relationship (Sonkin, 1985; Browne, 1987). Many battered women report that their husbands have repeatedly threatened to kill them if they call the police or attempt to leave. Those who treat the abusive man confirm that the violence often escalates once the woman attempts to end the relationship. The abuser's threats of continued physical abuse are often accompanied by economic threats. These commonly include threats to withhold child support and to sabotage her job plans. Some men make threats that are specific to the children, exploiting their wives fears of losing the children once they report domestic abuse.

Most battered women's fears about calling the police or seeking court protection are logical reflections of her past experience with her abusive spouse. What appears from the outside as an irrational pattern of "crying wolf," becomes much more understandable when one identifies the specific scare tactics of the abuser. These, combined with inconsistent and sometimes hostile responses from the criminal justice system reinforce the battered women's fears that there is no real escape from the abuse.

**Characteristics of the Abusive Husband**  
The following descriptive profile of the abusive husband is provided to help criminal justice workers become more sensitive to the concerns of battered women and more knowledgeable (and hence, less vulnerable) to the manipulation patterns of the abusive man. The profile is drawn not only from victim accounts and research findings but also my twelve year experience as a counselor of abusive men at *Emerge: A Men's Coun-*

*seling Service on Domestic Violence*, in Cambridge, Massachusetts. Founded in 1977, *Emerge* was the first program of its kind in the nation. Each characteristic listed has implications for all those who are in a position to identify abusive behavior and prescribe solutions.

## 1. *Discrepancy in public versus private behavior*

Men who batter their wives often do not come across to those outside the family as abusive individuals. Often, the abusive man maintains a public image as a friendly, caring person who is a devoted "family man." This good reputation often leads neighbors and friends to conclude that his wife is exaggerating when she reports physical abuse. Police responding to these reports may be swayed by the calm demeanor of the perpetrator. By contrast, his wife may seem more agitated and hysterical, leading police officers to conclude falsely that she is the more aggressive party. This false picture is often repeated in court. Dressed in a suit and accompanied by counsel, the male defendant frequently comes across more credibly than the female plaintiff. This is especially true when the perpetrator is a professional man. In such a case, the picture the plaintiff paints of her husband's behavior may seem inconsistent with his stature in the community. Approximately one-third of the men counseled at *Emerge* are professional men who are well respected in their jobs and their communities. These have included doctors, psychologists, lawyers, ministers, and business executives. Police and court officers must look beyond the popular image of the abusive man as an easy-to-spot brute. While some abusers bear some resemblance to this stereotype, most do not.

## 2. *Minimization and denial*

Living in a society that undervalues domestic life, abusive men do not expect their abusive behaviors toward women to be taken seriously. One man said it had never occurred to him that he could be arrested for such a "minor thing." This man's attitude that men's ill-treatment of women doesn't belong in the public sphere, does not exist in a social vacuum. It is mirrored by recent public debates about the relevance of how public men treat their wives, particularly when allegations of wife abuse or infi-



delity are made. It is reflected by the historical reluctance of police and courts to intervene in "domestic disturbances" (Roy, 1977).

Few, if any, abusive husbands characterize themselves as men who beat their wives. A recent informal poll of clients at Emerge revealed that few men, even the most severe abusers, had thought of themselves in those terms. The abuser's tendency to minimize problems is comparable to the denial patterns of alcohol or drug abusers. Problem drinkers minimize their drinking by favorably comparing their own consumption pattern to "worst case" alcoholics — those who drink bottles of hard liquor on the street. Many battering husbands similarly minimize their violence by comparing it to "brutes who beat their wives every day." Besides spurning the "wife beater" label, most abusive men underreport their violence. Research studies of violence-reporting patterns among husbands and wives have found that husbands are more likely than wives to underreport their own violence (Szinovacz, 1983; Browning & Dutton, 1986). For instance, husbands are more likely to count even severe acts of violence (e.g., choking, punching, beating someone up) as self-defense rather than violence (Brygger & Edleson, 1984). Frequently, what abusers report as self-defense is in reality violent retaliation. While some men rationalize their violence, other merely lie about it. The previously mentioned poll of Emerge clients found that many had lied about their violence when asked by neighbors, relatives, and police.

### 3. *Blaming others*

Perhaps the most common manipulation pattern of the abusive man is to project blame for his violence onto his wife. In treatment programs for abusers, statements like "she drove me to it," "she provoked me," "she really knows how to push my buttons" are common. Statements like these reveal the abusers' attempts to divert attention away from his own behavior and choices. Abusers in the early stages of treatment resist self-criticism by projecting responsibility for their violence onto others (Adams, 1988). This is similar to the alcoholic's tendency to blame other people, things, and circumstances for his drinking. The abusive husband, like the alcoholic, pre-

sents himself as a victim.

Too often, interveners get caught up in talking about the victim's behavior. This is a disservice to the abuser because it reinforces his denial of responsibility. When the topic of discussion shifts to his partner's behavior, the abuser is prevented from recognizing that he has choices in how he responds to her, and that some choices are more constructive than others. Often, the abuser manipulatively seeks allies in his attempts to monitor and police his wife's behavior. Abusers in later stages of treatment are able to critically identify this as a lack of respect for their partners. One man said "I could never accept her the way she was; I always felt I had to 'correct' her. And it was easy to find other people to agree with me." (Emerge, 1989).

### 4. *Controlling behaviors*

Advocates for battered women have pointed out that wife abuse is more than isolated acts of physical violence. It is a cohesive pattern of coercive controls that include verbal abuse, threats, psychological manipulation, sexual coercion, and control over economic resources (Dobash & Dobash, 1979; Schechter, 1982). The co-existence of these other controlling behaviors serve to remind the victim subliminally of the potential for physical abuse (e.g., yelling, threats, angry sulking) and to undermine her independence. The abuser's frequent criticisms of his wife erode her confidence in her own abilities. One abusive husband said he constantly tore down his wife's self-confidence because "I felt threatened whenever she felt good about herself." This man's wife said that it was only when she got support and validation from others that she began to trust that she could make it on her own. Social isolation is another tactic used by abusers to undermine their wife's autonomy (Walker, 1984). Accusations of infidelity or of "neglecting the family" serve to manipulate the woman into curtailing her contacts with friends, co-workers, and relatives.

### 5. *Jealousy and possessiveness*

Many battered women report that their husbands make frequent jealous accusations. For some abusers, this jealousy has an obsessive quality. These men constantly monitor their wife's whereabouts. Their surveillance activities often con-

tinue (and escalate) when their wives leave or attempt to end the relationship. These may include following her around, interrogating the children, eavesdropping on telephone conversations, and making frequent telephone calls to monitor her activities.

It bears repeating that pathological jealousy of this kind is not evident in all men who abuse their wives. Its presence should be seen as a significant indicator of potential homicidality (Sonkin, 1985). Closely related to this is extreme possessiveness which is often manifested by the abuser's unwillingness to accept the end of the relationship. Women who leave this type of man are subjected to ongoing harassment and pressure tactics, including multiple phone calls, homicide or suicide threats, uninvited visits at home or work, and manipulation of the children.

### 6. *Manipulation of children*

There is considerable variation among abusive husbands on whether their violence extends to the children. While child abuse is as frequent or more frequent than wife abuse for some abusive husbands, others have strong prohibitions against hitting their children. Regardless of whether children are directly abused, children are adversely affected by being exposed to wife abuse (Kalmuss, 1984). Children exposed to abuse are more insecure, more aggressive, and more prone to depression. Children in this situation commonly feel divided loyalties between their mothers and fathers. Research shows that childhood exposure to wife abuse is a significant predictor of future wife abuse (Hotelling & Sugarman, 1986).

Courts are often asked to decide custody and child visitation issues when battered women file for protective orders. Judges must be wary of the manipulation patterns of the abuser in making these decisions. For instance, abusive husbands commonly misuse child visitations as a way of gaining access to their wives. Abuse of child visitations not only compromises the battered woman's safety but also has an adverse emotional impact on the children. Some abusers use their children as emissaries who are responsible for spying on mom's activities or for convincing mom to "let Daddy come home." Some abusers contest cus-



today or child support agreements as a bargaining tactic designed to coerce their partners to reconcile or to drop criminal complaints. Prosecutors and judges should routinely encourage battered women to seek modification of child visitation agreements if such agreements are being abused, or if the child's or woman's physical safety is being jeopardized.

### 7. Substance Abuse

Research studies have varied findings about the degree of overlap between spouse abuse and substance abuse. One study found 70% of men arrested for domestic battery showed evidence of alcohol or drug abuse (Roberts, 1987). A survey of women who sought refuge in shelters for battered women, found that 48% reported that their abusive husband abused alcohol. This variation in findings is attributable to the use of differing criteria in assessing the batterer's use or abuse of substances. There is also evidence to suggest that police are more likely to arrest a batterer when there is also evidence that he is under the influence of alcohol or drugs (Kantor & Straus, 1986).

Despite the high correlation, experts in the domestic violence field agree that alcohol or drug use does not cause men to batter their wives (Coleman & Straus, 1983). Acting as a socially approved disinhibitor, alcohol use becomes a convenient excuse for some men to hit their wives. The battering husband who abuses alcohol has two problems for which he must take responsibility. Alcohol or drug treatment alone will not stop the batterer's abusiveness. Recovering alcoholics exhibit high rates of abusive behavior. Despite this, one study found that courts in one state refer most alcohol/drug abusing batterers to alcohol or drug treatment programs only — without also referring to specialized batterer treatment programs (Roberts, 1987). Because probation officers and judges have been more sensitized to alcohol and drug problems, there is a danger of focusing exclusively on the substance abuse when the substance abuser is also abusive toward his wife. When the problems co-exist, it is critical for the individual to be evaluated for both kinds of treatment.

### 8. Resistance to change

Like substance abusers who are still in

the denial stage, most abusive husbands lack internal motivation to seek counseling or to change their behavior. It is estimated that less than 1% of men who batter are referred to specialized treatment programs for abusers. Approximately 20% of Emerge clients are court-ordered to attend the program. Though the rest, technically, are self-referred, most of these have sought counseling only once it became clear that their relationship will not continue unless they attend. For most of these men, the problem as they see it is that their wives have left them, not that they have been violent. Initially, the abusive man bargains with his wife to change as little as possible (Adams, 1989). For instance, he may agree to attend one week of counseling in exchange for returning home or having criminal charges against him dropped. Fifty percent of Emerge clients drop out of treatment within the first month, a figure that is consistent with other programs. Some drop out as soon as they reconcile with their wives. Others drop out as soon as it becomes clear that a reconciliation isn't possible. The typical battering man, like the alcoholic, brings a 'quick fix' mentality to counseling. His desire to restore the status quo outweighs his desire to change.

### Summary

For court workers to become aware of abusive behavior patterns does not condemn the abuser's chances for change. On the contrary, this insight helps interveners resist the abuser's manipulation patterns and more realistically appraise his suitability for rehabilitative efforts. Clearly, some perpetrators pose too great a danger to their wives for the courts to release them into the community. Assessments for potential lethality should be made in every spouse assault case. In my experience, the men who do make significant changes are those who accept legal sanctions and persevere with counseling. These men respect their wife's decisions concerning the amount and nature of contact she wishes to have with him. He learns to focus on his own rather than her behavior. Much depends on the public sanctions that the abuser encounters along the way. Courts have a critical role to play in this. They determine whether the abuser attends a treatment program, how long he stays in the

program, and whether the victim's safety is ensured while he attends the program.

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# **Spousal/Partner Assault:**

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## **A Protocol for the Sentencing and Supervision of Offenders**

By

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Quincy, MA. 02169

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6/20/93

## Chapter 1

### Who are these offenders?

There is a great deal of misconception about who male batterers are. Are they mentally ill? Are they simply men who have anger control problems, too often provoked by their wives or partners? Are they out-of-control substance abusers? Are they men carrying out their assigned roles in a patriarchal society? All of the above have been suggested at one time or another by respected clinicians and researchers in their fields.

Complicating their identification, male batterers present a very different posture in public than they do in the privacy of their own homes. The image they project to outsiders is often of a caring, concerned husband or father. They minimize the effects of their behavior on others -- ironically, as do their victims. They blame others, especially their victims. They manipulate their children.

But the fact is, men who find their way into the court and eventually end up under correctional supervision for spousal/partner assault share the same risk characteristics of the most dangerous offenders currently on probation/parole across the country. In fact, many, if not most, of these men have been in the criminal courts before, repeatedly, for offenses that span the entire criminal spectrum.

#### 1. Extensive Criminal History

For example, when Massachusetts computerized its civil restraining order files in 1992, linking them with the state's criminal offender record data base, it found that almost 80 percent of the first 8,500 male subjects of restraining orders had prior criminal records in the state (Commonwealth of Massachusetts, 1992).

Numerous National Institute of Justice studies examining the deterrent value of arrests in cases of domestic violence have also revealed that most men brought to police attention for domestic violence have criminal records. One of the first studies of such men in Florida, Vermont, Ohio and North Carolina found that 50 percent of the men had prior records (Fagan, Stewart & Hansen, 1983); 79 percent had them in a Charlotte, North Carolina study (Hirschel, Hutchinson & Dean, 1992); and a Minneapolis study found 60 percent with previous offenses (Sherman & Berk, 1984). Similarly, a study of men prosecuted for domestic violence in Indianapolis found 74 percent had prior records, excluding men who had previous felony or domestic violence convictions (Ford & Regoli, 1992).

In the largest study of its kind, all 644 men brought for restraining orders in 1990 in Quincy,



Massachusetts, a court just south of Boston, were examined (Klein, 1993). Like the statewide findings 78 percent were found to have a prior criminal record in the state (at least one prior criminal complaint). The average number of prior complaints was 13, meaning that the average male abuser had been in court for more than six separate sets of crimes. (There were an average 1.95 complaints per arraignment.) One defendant had been the subject of 113 complaints.

Offenses charged ranged from murder to minor in possession of alcohol. The vast majority were for misdemeanor charges, which in Massachusetts can carry sentences of up to 2-1/2 years in jail.<sup>2</sup> One of the most common offenses among the restraining order subjects was operating a motor vehicle after license revocation or suspension. The great bulk of these abusers had already been prosecuted in court for failing to obey a court or Registry of Motor Vehicle injunction against driving. In other words, these men show no prior inclination to comply with criminal and/or civil orders.

In another indication of prior criminal involvement, almost a quarter of the men had been on formal probation with or without a suspended sentence or jailed for prior offenses.

Thirty of the men had prior records but the records were off-line or inactive. This meant they had not been arrested or brought to court for any charge within 15 years. In short, of the abusers with prior records, over 94 percent were criminally active within the past 15 years.

## **2. Prevalent Substance Abuse**

The correlation between substance abuse and spousal assault is found throughout the literature. In 23 studies conducted between 1980 and 1988, the proportion of batterers who had prior histories of drug and/or alcohol abuse ranged from 24 percent to 86 percent. Most were in the mid-60s (Tolman & Bennett, 1990).

In terms of the type of prior complaints, 54 percent of the Quincy defendants had prior records for alcohol and/or drug charges. The majority of these were for drunk driving. A third of those arrested for drunk driving were also arrested for various drug offenses. Another 35 percent of those with alcohol and/or drug records had records for drug offenses only and the remaining had them for public order complaints, including disorderly conduct or minor in possession of alcohol, crimes usually associated with alcohol abuse. The average number of such complaints was more than four.

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<sup>2</sup> This is consistent with state charging practices. With the exception of murder and rape, the vast majority of offenses may be prosecuted as either misdemeanors or felonies. In Massachusetts in 1990, less than two percent of the complaints brought to court were prosecuted as felonies.

The fact that so many of these abusers had prior records for drunk driving is particularly significant since the average blood-alcohol level for drunk drivers in the state is over .16. Generally, any level over .15 is considered a sign of sustained, abusive drinking.

### **3. Generalized Pattern of Violence**

Forty-three percent of the male batterers in Quincy were also found to have prior records for crimes against persons. To determine if these men specifically targeted female victims, a sample of 155 of these prior complaints were checked for sex of prior victims. It was found that almost two-thirds had prior crimes against male as well as female victims. In other words, these men were generally violent, assaulting other males as well as female intimates. The average number of prior crimes against persons complaints was 4.5.

In addition to prior criminal records, more than one third of these men also had prior civil restraining orders against them. Studies confirm that women often obtain multiple orders against their abusers over time. In other words, not only do these men have a history of prior criminal activity, but their abuse of their spouses/partners is repetitive, ingrained behavior.

### **4. Relatively Youthful**

Studies reveal that the average abuser brought to court for restraining orders or to police attention for domestic disturbance calls is 32 years old, with two-thirds being between their mid-20s and early 40s. In Massachusetts, this is just two years older than the average probationer and the same age as the average drunk driver on probation.

In the study of Quincy criminal records, the younger the abuser, the greater likelihood he had a prior record and the longer that record was. As with most criminals, the younger the offender enters the criminal justice system, the more likely he is to remain in it.

### **5. Separated or Unmarried, With Children**

Until the 1980s, research indicated the majority of abusers were married. However, more recent studies reveal an increasing majority of abusers are younger and unmarried. One of the reasons for this perhaps is that many restraining order laws have become broader in scope, allowing females to obtain them against non-cohabitants, including perpetrators of date violence.

Married or unmarried, studies reveal that one third to a majority of abusers have children by their victims.



Further, studies reveal that more than one quarter of abusers are physically separated from their victims prior to their abuse (Chaudhuri & Daly, 1992; Gondolf, 1992; Klein, 1993).

## **6. Other Risk Characteristics**

Male batterers share still more risk characteristics with their highest risk criminal peers. They rationalize their crimes, they have poor family ties and lack a stable home. Many either are unemployed or marginally employed. Almost to a man, batterers either deny their spousal/partner abuse or feel entitled to exercise control over their spouse/partner. Historically, there exists ample precedent for this feeling of entitlement. But current social structures also provide much reinforcement for patriarchy. Coupled with the general violence of modern culture, not to mention approving peers, many men feel very supported in engaging in spousal/partner abuse.

Many of the male batterers who reach court have or are ordered to vacate their residences. A large percentage of their wives/girlfriends have already divorced and/or physically separated from them. As a result, their family support is minimal if not negative. In terms of residence changes, it is usual for these men to have had at least one recent residence change as a result of the abuse. Also underlining their lack of stability in the community, there is a large correlation between unemployment, or under employment with spousal/partner abuse (Gelles & Cornell, 1990; Hotaling & Sugarman, 1986; Sonkin, Martin & Walker, 1985).

All of the above, like prior criminal records and substance abuse, constitute typical characteristics of offenders that increase risk of recidivism.

Much has been written of other male batterer characteristics (see, e.g., Hotaling & Sugarman, 1986). However, close examination reveals that most of the characteristics are either not unique to male batterers, are only characteristics for a skewed sample of batterers, or most probably exist as a result of the battering behavior. For instance, batterers have been found to be depressed, angry, lack self-esteem and so on. But these conditions may crop up only after the abuser has been arrested or ordered to stay away from his wife/partner, or because his wife/partner has left or is threatening to leave him (Stordeur & Stille, 1989).

Researchers have identified only two characteristics that consistently and significantly correlate with spousal/partner abuse. They are substance abuse and having experienced violence in their family of origin, either having witnessed fathers beating up mothers or having been abused themselves (Finklehor, Hotaling, & Yllo, 1988; Hotaling & Sugarman, 1986; Tolman & Bennett, 1990; Stordeur & Stille, 1989). Of course, as experts are quick to point out, not all children from such families or males suffering alcoholism and drug addiction are destined to become spousal/partner abusers.

## **Summary of Offender Risk Characteristics**

In summary, the male batterers brought to court typically share the risk characteristics of the most hard core, dangerous offenders. First, they have extensive prior records. Even those who may have no previous records have most likely abused their spouses/partners previously. Their criminal behavior is ingrained. Second, they do not share the justice system's view that what they did was wrong, much less criminal. They rationalize their behavior or minimize it. Third, they are alcohol and/or drug abusers. Fourth, they lack strong ties to family, employment or the community, as measured by family disruption, high unemployment, and frequency of residency changes.

On an environmental level, they are also high risk because they have easy access to their victims. Depending upon local laws, they may also have easy access to weapons.

## **A Word About Their Wives/Partners**

In passing, it should be noted that studies reveal victim characteristics are not significant in determining abuse. Although there is great tendency to blame the victim for her continued abuse, studies reveal that women are in danger of abuse whether they stay with the abuser or not, take out a restraining order or not, divorce them if married or not, cooperate with criminal prosecution or not. In fact, some studies suggest that victims may be in greatest danger when they finally do leave their abusers (Chaudhuri & Daly, 1991; Grau, Fagan, & Wexler, 1985). Women are most likely to be murdered when trying to break off an abusive relationship or when reporting an abusive incident to authorities (Sonkin, 1985), and nearly three-quarters of women treated for medical emergencies received their injuries after leaving their abusers (Stark, 1981).

There are a number of reasons why women stay with abusive partners. But studies overwhelmingly confirm that the prime reason is fear (Goolaskian, 1987). Add to this economic dependence, social pressure to preserve the family or provide a father for the children, their own substance abuse problems, or lack of coping skills due to years of prior abuse and it is not difficult to understand why victims are unable or unwilling to break away (Kramer, 1989).

As frightening as domestic abuse is, the experience of publicly disclosing it has been compared to falling off a cliff....Women are more likely to be murdered while attempting to report abuse or to leave an abusive relationship....Those who treat the abusive man confirm that the violence often escalates once the woman attempts to end the relationship. The abuser's threats of continued physical abuse are often accompanied by economic threats. These commonly include threats to withhold child support and to sabotage her job plans. Some men make threats that are specific to



the children, exploiting their wives fears of losing the children once they report domestic abuse....What appears from the outside as an irrational pattern of "crying wolf," becomes much more understandable when one identifies the specific scare tactics of the abuser. These coupled with inconsistent and sometimes hostile responses from the criminal justice system reinforce the battered women's fears that there is no real escape from the abuse (Adams, 1989, 23).

# No Boundaries

The physical and mental effects of family violence are seemingly limitless

**T**he toll taken by family violence is incalculable — an endless parade of bruises, cuts, fractures and other injuries, both physical and mental. Some of these injuries eventually heal, but many do not.

The death rate from family violence is believed to be high. According to "Family Violence: An Overview," published by the U.S. Dept. of Health and Human Services last January, "1,100 children are known to have died as a result of abuse or neglect in 1986," and many people believe that the actual figures must be much larger. A 1979 FBI report stated that 40% of murdered women and 10% of murdered men were killed by partners.

Among victims who survive, long-term physical impairment may be common. Eli H. Newberger, MD, director of the Family Development Program at the Children's Hospital in Boston, notes, for example, that "injuries to the nervous system from direct trauma or shaking appear to be responsible for many cases of cerebral palsy and profound neurological impairment" among children.

But perhaps the most widespread long-term effect of family violence is the psychological toll taken on its victims. There is a growing body of evidence to suggest that, even when the physical wounds heal, victims of family violence may remain severely damaged in other respects, more difficult to detect.

Suicidal feelings, depression, anxiety, substance abuse problems, psychosomatic symptoms, diminished self-esteem, shame, nightmares, fears and phobias, and inability to trust or develop intimate relationships are widely cited as being among both

the short- and long-term consequences of abuse for adults and children alike.

The long-term psychological consequences for the children of violent homes may be particularly severe, if only because their lives are blighted so early and at a critical developmental stage. Research indicates that even witnessing violence can have a wide range of long-term psychological effects on children, with effects that range from psychosomatic complaints to posttraumatic stress disorder.

Experts have identified two "constellations" of symptoms arising in abused children, notes Sandra Kaplan, MD, of the Division of Child and Adolescent Psychiatry, North Shore University Hospital, Manhasset, N.Y. Some children draw inward, channeling the emotions caused by the abuse into feelings of worthlessness, helplessness, hopelessness and depression that can result in self-mutilation or suicidal behavior.

Other children channel the effects into aggressive and impulsive behavior, Dr. Kaplan says. By the time they are adolescents, these children are at high risk of delinquency, substance abuse, absenteeism from work and school, homelessness, adolescent pregnancy and prostitution.

And finally, Dr. Newberger adds, abused children also seem to be at risk of disturbances in their social and emotional development, language disorders, and lower performance on standardized tests of intelligence.

In short, as "Family Violence: An Overview" states, "the ramifications of family violence have almost no boundaries."

*Flora Johnson Shelly*

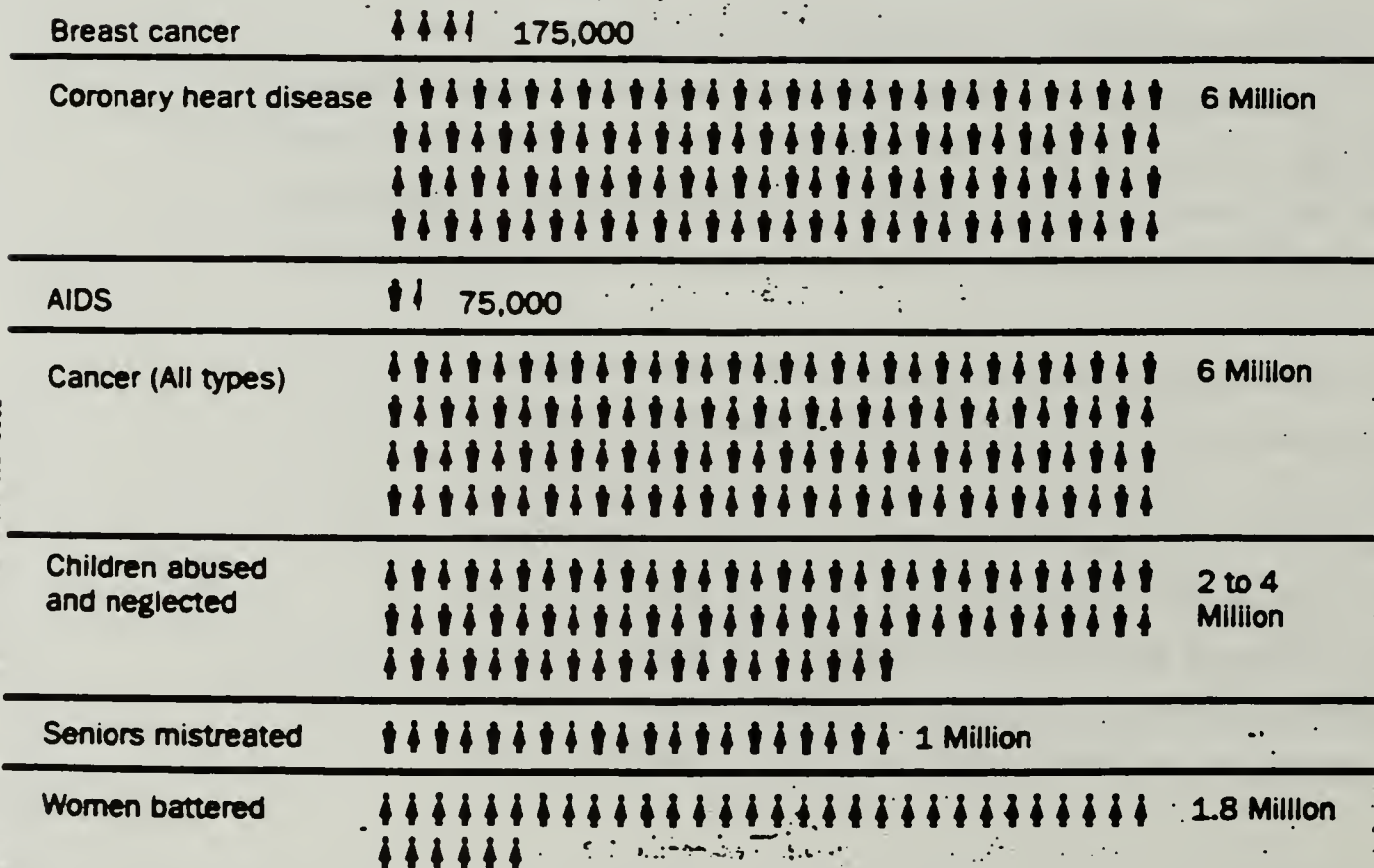
*FAMILY VIOLENCE is a simple phrase, but it encompasses a horrifying list of abusive behaviors, both physical and psychological, inflicted by one family member on another.*

*FAMILY VIOLENCE refers to people who are beaten, slapped, punched, shaken, kicked, burned, raped, sodomized, starved, abandoned, thrown down stairs, stabbed, shot, bludgeoned, choked, grabbed, shoved and killed.*

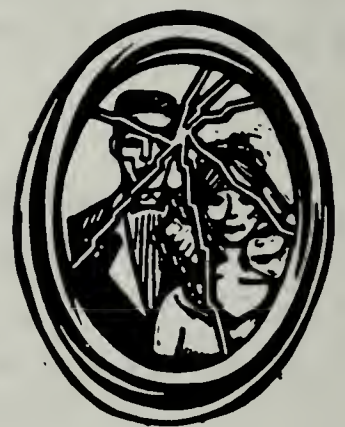
*It covers people who are subjected to verbal abuse, threats against themselves and those they love, abuse of pets, destruction of property and forced isolation. People who are denied access to money, food, transportation, medical care and other necessities of life. Who are deprived of rights. Who are forced to watch or listen as others in their families are abused.*

*The list is endless. There is seemingly no end to the horrors some human beings can inflict on those whom this society calls their "loved ones."*

## Family violence as a public health problem



Each figure = 50,000 cases. 1991 data





# YOUTH ALIVE

Dedicated to Preventing Violence

## WOMEN, FAMILIES, AND GUNS

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American women have been taught to fear violent crime by strangers more than the violence in their own homes. The gun industry is using this fear and women's growing sense of independence to market guns to women under the guise of protection. This provides a false sense of security which can be fatally misleading. *The greatest threat to a woman comes from the people and guns within her own home.*

\* FROM 1976 TO 1987, MORE THAN TWICE AS MANY AMERICAN WOMEN WERE SHOT AND KILLED BY THEIR HUSBANDS OR BOYFRIENDS THAN WERE MURDERED BY STRANGERS USING GUNS, KNIVES OR ANY OTHER MEANS.<sup>1</sup>

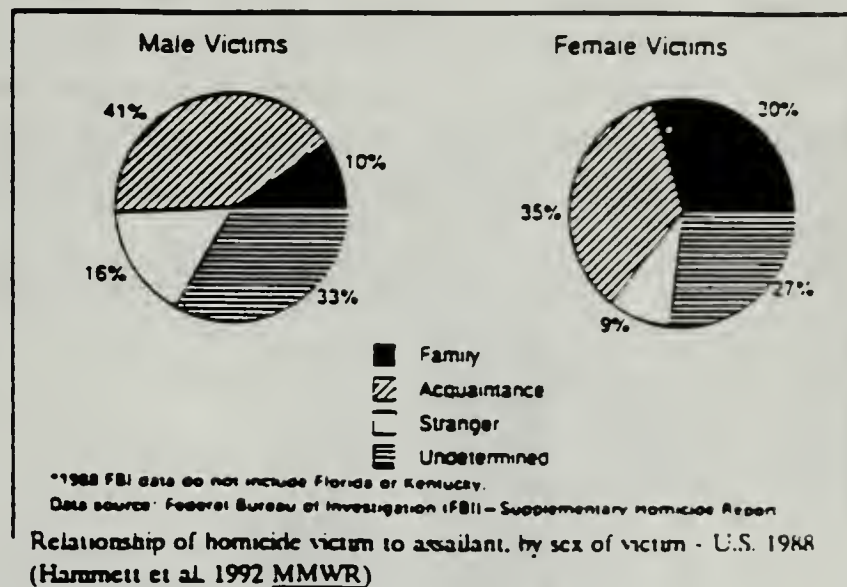
*Historically, women were told that men with guns were the only protection they had against strangers. Today, "feminist" gun advertisements tell women that they are in danger from criminals, and guns offer them protection. Women were and are more likely to be killed by their "protectors," and their protector's guns, than by strangers.*

\* AN AMERICAN IS OVER FOUR TIMES MORE LIKELY TO BE ATTACKED AT HOME BY SOMEONE HE OR SHE KNOWS THAN ATTACKED AT HOME BY A STRANGER.<sup>2</sup>

*The "Bump in the Night" scenario where a lone female fends off a psychopathic stranger rapist with her .38 is a far less likely situation than that same woman having to defend herself against her husband or boyfriend. While pro-gun organizations promote the right of women to defend themselves against society's "criminals," they ignore the far more common phenomenon of family violence.*

\* PEOPLE IN THE UNITED STATES ARE MORE LIKELY TO BE MURDERED BY A MEMBER OF THEIR OWN FAMILY THAN PEOPLE IN ENGLAND, GERMANY AND DENMARK ARE TO BE MURDERED BY ANYONE AT ALL.<sup>3,4,5</sup>

*Most family homicides are the result of ongoing family violence, and both of these complex problems are not easily solved by simply locking up criminals. Guns are used in 65% of all family murders in this country.<sup>6</sup> Guns allow family violence to turn deadly in an instant.*



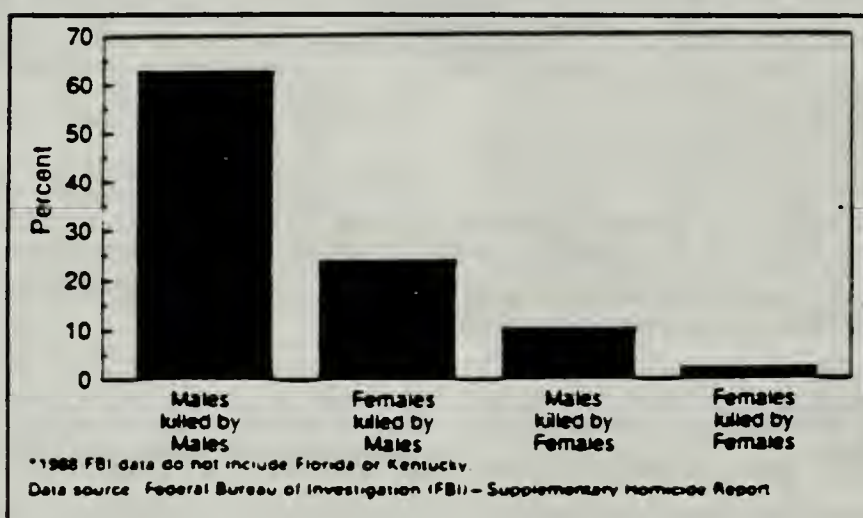


\* MORE WOMEN ARE KILLED BY THEIR HUSBANDS THAN MEN ARE KILLED BY THEIR WIVES.<sup>7</sup>

*The typical man who kills his wife is a batterer who shoots his wife when she tries to leave him. A woman is more likely to kill a battering husband in self-defense.<sup>8</sup> Men and women may kill their spouses for different reasons, but both sexes use guns for spousal murder about 70% of the time.<sup>9</sup> The presence of a gun makes a battering relationship even more violent and increases the chance of death for both partners.*

\* A GUN IN THE HOME IS 43 TIMES MORE LIKELY TO KILL A FAMILY MEMBER THAN IT IS TO BE USED TO KILL IN SELF-DEFENSE.<sup>10</sup>

*A woman may own a gun to protect her family, but once the gun is brought into her home, it may put her and her family at risk of suicide, homicide, or an unintentional shooting death. If an intruder does come into a gun owner's home, even the most experienced gun owners can have their guns turned against them. For example, 16% of all police officers who are shot and killed in the line of duty are murdered with their own service weapons.<sup>11,12</sup>*



Homicides, by sex of victim and offender - 1988 (Hammett, 1992 MMWR)

\* 90% OF FEMALE MURDER VICTIMS ARE KILLED BY MEN, WHILE ONLY 14% OF MALE MURDER VICTIMS ARE KILLED BY WOMEN.<sup>13</sup>

*Gun advocates say that women are as capable as men of using guns responsibly. This is faint praise considering that more men than women own guns, and more men than women kill each other with guns. If women murdered at the same rate as men, nearly 8,000 more people would be murdered every year.<sup>14</sup>*

\* MOST MURDER VICTIMS ARE KILLED BY SOMEONE THEY KNOW.<sup>15</sup>

*Many of the people who pull the triggers are not hardened criminals who could be easily identified and separated from the law-abiding majority. Owning a gun for protection from strangers gives a false sense of security.*

\* FAR MORE PEOPLE ARE MURDERED DURING ARGUMENTS THAN DURING ROBBERIES.<sup>16</sup>

*In this society, people live in fear of muggings, home invasions and carjackings. However, in 1986, only about one quarter of all murders with known motives took place during another crime, and almost half took place during a non-criminal argument.<sup>17</sup>*

\* AN ATTACK WITH A GUN IS FIVE TIMES MORE LIKELY TO BE DEADLY THAN AN ATTACK WITH A KNIFE.<sup>18</sup>

*A person does not have to be intent on murder to kill with a gun; all he or she needs to do is pull the trigger. Thousands of lives are lost each year because easily available guns caused heated arguments to turn deadly.*



# Violence

U P D A T E

A Monthly Newsletter Dedicated to the Continuing Education of Professionals in the Field of Interpersonal Violence

## FEATURE Impact of Spouse Abuse on Children of Battered Women

### Implications for Practice

by Honore M. Hughes  
Saint Louis University

**L**iterature regarding children of battered women is sparse, with the results from research primarily accumulated over the last 10 years. Many people do not realize that when spouse abuse occurs in a family, the children are also very likely to be negatively affected. The most accurate description of these unwilling observers—the “unintentional victims”—is that they are emotionally abused. Recently, critiques and summaries of this area have begun to appear, and much of the following article is based on two reviews by Hughes (1, 2).

At this time, investigations in this area have progressed beyond the descriptive and clinical anecdote stage. Researchers working actively in this area are using standardized instruments and appropriate comparison groups. However, the samples of families studied have been mostly limited to low-income families and to those who sought refuge from violence at shelters for battered women or who have requested treatment for marital violence.

#### Prevalence

To briefly review, researchers' best estimates regarding the prevalence of spouse abuse range from 10% to 30% of couples. Even with the most conservative estimates, 10% to 15%, it is clear that a substantial number of children live in violent homes. When investigators ask women who have been beaten where their children are while they are being assaulted, in 90% of the cases the children are either in the same room or in the next room.

#### Impact

Although the data base regarding the impact of observing spouse abuse is relatively small, there is sufficient evidence to state that for children, being exposed to parental violence is a traumatic experience. On standardized behavior problem checklists, mothers describe high levels of problematic

behavior in their children. Consistent differences between children of battered women and comparison children in both internalizing (e.g., depressed, anxious) and externalizing (e.g., aggressive, dis-

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obedient) behaviors have been found, with both behavioral and emotional problems significantly higher in the children of battered women. Other difficulties that have been reported include (a) an increase in somatic symptoms, (b) lower cognitive skills and school achievement, (c) difficulties with social problem solving, and (d) tendencies to be more external in locus of control.

Focusing more on personality development, clinicians have also discussed the disruption that occurs in personality development when developmental stages are interrupted by violence in the family. For many, Erik Erickson's psychosocial stages of personality development have been helpful in understanding the problems experienced by violent families. His first and most basic stage, that related to the development of trust in other people, is the one most frequently mentioned by clinicians as being disrupted by family violence.

#### Severity of Impact

Other than high mean scores, another way to examine the impact of spouse abuse on the children is to look at the proportion of children who are reported to exhibit more severe difficulties, problems that are beyond those of the normative group for the measure. The Child Behavior Checklist (CBCL), one of the most commonly used instruments, provides T-scores and percentiles for age

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and gender; thus shelter children can be compared with the normative sample on extent of problems.

Several researchers have investigated the percentage of children in shelter samples who have CBCL scores above the cutoffs that indicate a need for clinical services. Depending on the gender of the child, the type of violence experienced, and the T-score used as the cutoff, the percentages reported indicate that from 25% to 65% of shelter children receive scores above that clinical level. On the average, approximately 35% to 45% of shelter children fall above that cutoff.

## Mediating Variables

In terms of factors that influence the psychological adjustment of individual children, investigators in this area have stressed the importance of identifying variables that mediate the impact of domestic violence on the children. The list of potential mediators has been adapted from a number of sources (1, 2) and includes both child and situational/contextual factors (see box). The variables that have received the most in-depth examination are past experience with violence, and gender.

## Type of Violence Experienced

Researchers in the area of family violence have quite consistently found that the co-occurrence of different types of violence is rather high, with estimates in the 40% to 60% range. As an example, available evidence from shelters and treatment programs indicates that 50% to 60% of the observers of domestic violence have also been physically abused themselves. Thus, in violent homes, chances are about 1 in 2 that if child abuse is present, spouse abuse is also likely to be occurring, and vice versa.

Based on research I conducted, results indicate that past experience with different types of violence does seem to make a difference in psychological adjustment: The more types of violence children are exposed to, the less well adjusted they will be. Thus type of violence experienced seems to be an important mediator in children's adjustment.

## Gender

A differential impact on the psychological adjustment of children in shelters based on gender seems to appear in a manner that is inconsistent with previous literature on influences of gender on psychopathology. Most researchers in this area find that both shelter boys and shelter girls receive high mean scores on both internalizing and externalizing behaviors. Moreover, when severity of impact is investigated using clinical level cutoffs based on those same behaviors, again both boys and girls are high on both types of problems. It is interesting to note that this pattern is contrary to the traditional gender-role-related pattern of behavior

problems, wherein boys showed externalizing-type — and girls exhibited internalizing-type — difficulties.

## Mechanisms by Which Conflict Exerts an Impact

In terms of a framework for understanding the impact of spouse abuse on children and the influence of mediating variables, my adaptation of Gryen and Fincham's (3) discussion of marital conflict and children's adjustment suggests that we look at direct and indirect mechanisms. Under *direct mechanisms* fall (a) modeling of aggressiveness and (b) stress in the family.

Regarding the fact that both boys and girls exhibit internalizing and externalizing symptoms, the aggressiveness on the part of both genders likely has been acquired through modeling. Their fathers are strong, powerful models who obtain what they want through aggressiveness. In contrast, the children's anxiety and depressive-type symptoms are apt to be a result of the stress the children feel from the spouse abuse. Jaffe, Wolfe, and Wilson (4) point out that many of the signs of distress in children of battered women are very similar to posttraumatic stress disorder (PTSD) symptoms.

*Indirect mechanisms of influence* include (a) characteristics of the parent-child relationship (for example, quality of attachment or emotional availability) and (b) disciplinary practices (e.g., those that are exceedingly negative, harsh, inconsistent, and so on). Related to the former, the parent-child relationship can be influenced by many factors, but one of the most important is the mental health of the mother. A common effect of being beaten is depression, with the result being that the abused woman is often emotionally unavailable. Thus the quality of attachment and the parent-child relationship are at risk for being negatively affected.

The second indirect mechanism of influence concerns disciplinary practices. Again, many variables can enter into this equation, depending on the length of time there has been physical violence between the parents, whether violence has been directed at the child, how much parenting is done by either parent, and the effectiveness of the parenting. Inadequate parenting in the form of very inconsistent and/or harsh discipline puts children at especially high-risk for behavioral and emotional problems.

## Research Questions

Because so little empirical research has been conducted with children of battered women, there are multiple subareas that need extensive investigation. It is clear that, in addition to searching for variables that mediate the impact, empirically testing the proposed model for the mechanisms of influence, and studying more diverse samples, the



## Feature...

Continued

major task for researchers is to examine the effectiveness of different treatment approaches.

Intervention with children of battered women is the area in which there is probably the smallest amount of literature available. Most of the information is based on clinical experience; therefore we have little empirically tested information to guide our clinical work. The few interventions that have been published have assessed outcome informally, although the results look promising. More types of treatment, including crisis intervention, need to be evaluated, and in a more formal, standardized manner.

Several clinical descriptions of interventions have been published (e.g., 4), with the majority of them developed for school-age children using a time-limited group format. Jaffe et al. have informally evaluated their group approach from the children's, mothers', and clinicians' perspectives and recommended it as appropriate for mild problems. In addition, they suggested the group be used

### Points to Remember

1. Spouse abuse is emotional/psychological abuse to observers. Don't overlook the children.
2. The more types of violence a child is exposed to, the worse the child's psychological adjustment is likely to be.
3. Ask about the presence of violence in the homes of your clients and attend to the response. Provide information about safety and shelters if necessary.
4. Behavioral/emotional difficulties that we see most frequently are aggressiveness and anxiety among both boys and girls.
5. Intervene by actively disapproving of the use of violence and by teaching children new interpersonal and problem-solving skills.

as a general educational format for any child who has been exposed to parental violence.

Some of the issues covered in the groups include (a) labeling feelings, (b) dealing with anger, (c) safety skills, (d) social support, (e) social competence and self-concept, (f) responsibility for parent violence, (g) understanding family violence, and (h) wishes about family (see 4 and 5 for more details).

### Implications for Practice

#### Child- and Parent-Focused Intervention

When we see any member of a family in our centers or clinics, the most important thing to do is to ask about violence between the adult partners. Our acknowledgment of the possibility of violence conveys to a mother that this experience is important to discuss and has a detrimental impact on her children as well as on her.

As clinicians, we need to be advocates for the child and mother. Put the family in touch with domestic violence projects or social workers if necessary. In addition, work with teachers and the school. Basically, help the woman to do what needs

### Mediating Variables\*

#### 1. Child factors

temperament, self-esteem, cognitive abilities, coping abilities, attributional style, gender, age, cognitive-developmental abilities.

#### 2. Situational/contextual factors

(a) more or less stable factors related to the child (e.g., past experience with violence, perceived emotional climate of the family).

(b) marital conflict factors (e.g., frequency, intensity, duration, content, resolution, overt, covert, age at onset).

\*Adapted from Grych & Fincham, 1990; Higgins et al., 1991; Higgins & Jouriles, in press; Moore & Pepler, 1990.

to be done to stop the violence and keep herself and her children safe.

#### Child Focus

Research findings indicate that we must intervene with both behavioral difficulties (especially aggressiveness) and emotional problems (e.g., depression, anxiety, other PTSD-type symptoms). Empirical evidence from other areas of family violence suggests that intervention with aggressiveness is a major priority; one important and effective approach to treating aggressiveness is teaching anger control (e.g., 6). In addition, children of battered women often show difficulties in social problem solving. Improving those abilities would be helpful, as this would allow the children an opportunity to establish peer support systems. Teaching children how to get along better with peers, along with enhancing their empathy skills, has the additional benefit of reducing aggressiveness as well (5).

We must also attend to the emotional symptoms in both girls and boys. Research suggests that a cognitive-behavioral approach to treating both anxious and depressive symptoms would be helpful. Treat negative cognitive errors and other characteristic thought patterns that seem to be conducive to depression (e.g., attributions and locus of control). Working on the skills deficits that are seen in the areas of social problem solving can also help with low self-esteem and feelings of lack of competence. Play therapy (either nondirective or more focused) to deal with interpersonal and intrapersonal issues is also likely to be beneficial (7).

In addition, consider intervention for academic deficits as well as behavior problems. Success with school can be a strengthening and buffering experience for the children.

#### Parent Focus

Research from other areas of family violence and the model presented here suggests that we need



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to focus on parenting in two ways. One is to help a mother decrease her discipline problems. She can be a much more adequate parent with more effective discipline, and she will feel empowered by her effectiveness in her role as a mother. Second, we need to attend to and treat women's depression. Doing so will also improve a mother's ability to be attached to her children and meet their emotional needs.

### Comprehensive, Extensive Approach

It is important to remember that effective treatment needs to be extensive, that is, lasting long enough to have an impact. With physically abusive families, research suggests that comprehensive (i.e., both child- and mother-focused) intervention lasting from 7-18 months after the violence has ended is necessary. Follow-up contacts—perhaps monthly—after the intensive intervention can be very effective.

### Health Care Professionals

Intervention from health care professionals can be extremely beneficial to the children and their families. Several studies indicate that a battered woman is most likely to seek help from the medical community, whether it is from her physician, pediatrician, or a hospital's emergency room. Often, depending on her financial and emotional resources, her first attempt to obtain help is from the ER. An informed physician or nurse can be very effective in assisting the children. Many good recommendations are contained in an article by Wildin, Williamson, and Wilson (8). Essentially, they urge that the health care person ask about violence in the family and respond to the woman's answers. With

the children, acknowledge how scary violence is and give the woman information about how to keep safe. If a referral seems to be in order, refer the family to a social worker rather than a psychiatrist.



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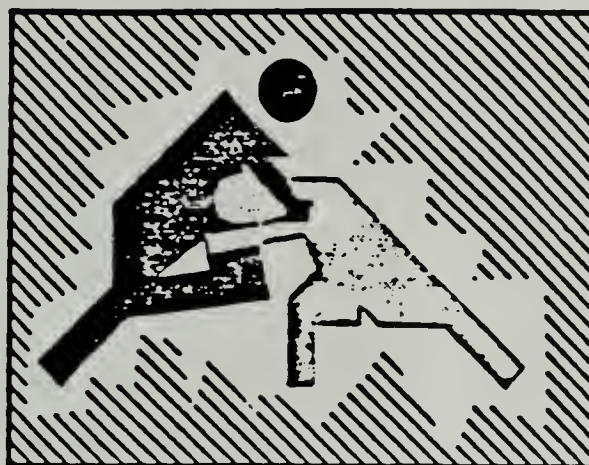
## FACTS ON ALCOHOL, DRUGS AND DOMESTIC VIOLENCE

Robert Mackey, M.A., C.A.S.

Statistics on the correlation between domestic violence and addiction range between forty-four percent according to the New Jersey Uniform Crime Report of 1989, to more than eighty percent in some research studies. According to the National Woman Abuse Prevention Project in Washington, D.C., alcoholism and battering share the following characteristics: Both are inter-generational, both involve denial and minimization of the problem, and both involve isolation of the family. Considering this, any intervention with either of these problems should consider the implications and presence of the other.

The topic of domestic violence and its association with addiction has received increased attention over the past decade. In a report by Schuerger and Reigle, personality and background data were obtained on two-hundred and fifty men enrolled in a group treatment program for spouse abuse. The major conclusions of this investigation verified the prevalence of alcoholism, drug abuse, and violence in the family of origin of abusive men. Fitch and Papantonio found violence between the batterer's parents, abuse of the batterer as a child, alcohol and drug abuse, and economic stress to be highly correlated to spouse abuse. Lehmann and Krupp cited several striking statistics on drinking and wife abuse. Data from the New York based program, *Abused Women's Aid In Crisis*, indicate that alcohol abuse on the part of the husband was a factor in over eighty percent of their cases. Another interesting point cited by these authors was the survey conducted by Scott, who interviewed 100 wives of alcoholics who had identified themselves as victims of abuse. Seventy-two percent of these women indicated they had been threatened physically, forty-five percent had been physically attacked, and twenty-seven percent had experienced "potentially lethal" attacks. None of these women had sought help as victims of battering, suggesting that alcohol abuse is not

only a factor in many cases of domestic violence, but that wife battering may be very common in families of alcoholics.



Lehmann and Krupp carried out their own survey of 1500 cases of women calling a hotline for abused women in Philadelphia. Fifty-five percent of these women said that their husbands became abusive when drinking. They asserted that although the association between alcoholism and domestic violence is clear, "most existing research supports the conclusion that alcohol abuse does not cause domestic violence." A final portion of this research involved interviews with ten alcoholism counselors and ten workers specializing in the field of domestic violence. Contrary to the research literature, workers in both fields believed that alcoholism was in fact the primary cause of the violence. These findings support the need for collaboration between the fields of addiction treatment and domestic violence as well as professional training on the subject.

In summary, the literature on alcohol abuse and domestic violence makes it clear that men with drinking problems are at high risk to be abusive toward their spouses. However, it is also clear that many men who have drinking problems do not abuse their wives and that some men who don't have drinking problems do abuse their

wives. Therefore, the conclusion that there is no direct causal relationship between drinking and spouse abuse, a position supported by most of the researchers in this area, appears irrefutable.

There are a few salient points to consider when intervening with the problems of alcohol abuse and domestic violence. First, there is no causal relationship between the two, therefore recovering from one of the problems does not assure resolution of the other. Treatment of the addiction should precede treatment for the battering; however in many cases, counseling for battering can be initiated concurrently or can be instituted initially to assist in confronting the denial of the addiction. In either case, the violence must be addressed immediately, if not through counseling then through legal sanctions and restraints to assure the safety of the victim(s). Victims of domestic violence, where alcoholism is involved or not, should receive the benefit of counseling and education concerning the cycle and dynamics of battering. Victims should also be afforded the opportunity to investigate family-of-origin issues, beliefs, behavioral patterns, and role expectancies that increase vulnerability to abusive types of relationships through disempowerment. The goal of intervention is to assure safety and to empower both victim and abuser to act in their best interest independently. While family therapy is an important aspect of addiction recovery, it is contraindicated in the presence of domestic violence. Early recovery where both problems exist should focus on individual self-management and should incorporate marital or family treatment as an adjunct therapy later in the therapeutic process. Domestic violence creates an extreme imbalance of power in the relationship prohibiting effective negotiation. This disempowerment requires a reasonable degree of resolution before the effective assertion of the victim's needs can be realized.



The following components are recommended to be incorporated in treatment programs for battering, in order of priority:

1. Instruct/support the alcoholic batterer to abstain from alcohol use and violence through direct appeal and appropriate treatment modalities (if necessary, through legal or formal sanctions such as restraining orders, job jeopardy, etc.).
2. Confront denial/minimization and projection of responsibility.
3. Incorporate recovery programs for addiction concomitant with anger management/self-control techniques.
4. Address potential relapse issues common to both problems such as resentment, self-pity, and cyclical self-defeating patterns of behavior.
5. Teach assertive communication skills.
6. Educate all parties on the techniques of effective problem-solving, thereby empowering each individual in the system to behave in his or her personal best interest.
7. Address the needs of the entire family system. These are inter-generational problems, and prevention is a primary objective.

#### Suggestions for Abusers

1. Seek help from people with specific knowledge of addiction and/or aggression control. This may require involvement in appropriate 12-step meetings and in anger management counseling. Remember, addressing one problem will not necessarily resolve the other.
2. Understand that both battering (physical and psychological) and addiction are progressive. The longer you deny the problems, the more dangerous they become.
3. Resentment, denial, self-pity, and loss of control are characteristic of alcoholism and battering. Be willing to get honest.
4. Alcoholism and family violence tend to be inter-generational; be prepared for long-term care. Be supportive and encourage help for your children and family.
5. You can't avoid influencing others, but you can't afford to control anyone but yourself.
6. Stop losing control of yourself to try to gain control of others.

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#### Suggestions for Battered Persons

1. Attempt to define yourself as a survivor of violence rather than a victim; it's more empowering.
2. Reach out to support groups; isolation is one of your greatest enemies.
3. Trust that ultimately you know what's in your best interest; act accordingly.
4. You are not the cause of another's behavior, so you cannot change someone else; focus on yourself.
5. Develop a safety plan for you and your children in the event that you need to act quickly. A local domestic violence service can assist you in developing your options and advise you of your rights. In New Jersey, the state-wide hotline number is: 1-800-572-SAFE.

Domestic violence and addiction can be a

lethal mix. The loss of control and effects of alcohol and drug abuse contribute significantly to the severity of beatings in abusive relationships. FBI statistics indicate that thirty percent of female homicide victims are killed by their husbands or boyfriends.

Battering, unlike the disease of addiction, is a socially learned behavior which can be reversed if the motivation for change is realized. Techniques and social skills can be re-learned to eliminate the violent behavior, just as life manageability can be attained through a commitment to recovery. Where abstinence of the drug alone is insufficient for true recovery, elimination of the violence is just the first of many steps toward breaking the cycle of domestic violence. The process of recovery ultimately benefits other significant people.

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The New Jersey Alcohol/Drug Resource Center and Clearinghouse serves institutions of higher education, state agencies, communities and school districts throughout the state of New Jersey by providing technical assistance, training, and resources in alcohol and other drug abuse education and prevention. For more information on the Clearinghouse, call or write to:

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